

EXHIBIT A

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 GEORGE AIRDAY,

4 PLAINTIFF,

5 -against-

Case No:
14-CV-8065(RWS)

6 THE CITY OF NEW YORK, KEITH SCHWAM and
7 DAVID H. FRANKEL,

8 DEFENDANTS.

9
10 DATE: March 29, 2017

11 TIME: 11:20 A.M
12
13

14 DEPOSITION of the Plaintiff, GEORGE AIRDAY,
15 taken by the Defendants, pursuant to a Notice and to the
16 Federal Rules of Civil Procedure, held at the offices of
17 the New York City Law Department, 100 Church Street, New
18 York, New York 10007, before Joanne Capparelli, a Notary
19 Public of the State of New York.
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1 A P P E A R A N C E S:

2

3 LAW OFFICE OF NATHANIEL B. SMITH
4 Attorney for the Plaintiff
5 GEORGE AIRDAY
6 111 Broadway, Room 1305
7 New York, New York 10006
8 BY: NATHANIEL B. SMITH, ESQ.

7

8 ZACHARY W. CARTER, ESQ.
9 CORPORATION COUNSEL
10 NEW YORK CITY LAW DEPARTMENT
11 Attorneys for the Defendants
12 THE CITY OF NEW YORK, KEITH SCHWAM
13 and DAVID M. FRANKEL
14 100 Church Street
15 New York, New York 10007
16 BY: CHRISTOPHER SEACORD, ESQ.
17 File #: 2014-036441
18 Control #: 165164

14

15 ALSO PRESENT:

16 MICHAEL SILLER - Department of Investigation

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1 F E D E R A L S T I P U L A T I O N S

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4 IT IS HEREBY STIPULATED AND AGREED by and between
5 the counsel for the respective parties herein that the
6 sealing, filing and certification of the within deposition
7 be waived; that the original of the deposition may be
8 signed and sworn to by the witness before anyone authorized
9 to administer an oath, with the same effect as if signed
10 before a Judge of the Court; that an unsigned copy of the
11 deposition may be used with the same force and effect as if
12 signed by the witness, 30 days after service of the
13 original & 1 copy of same upon counsel for the witness.

14

15 IT IS FURTHER STIPULATED AND AGREED that all
16 objections except as to form, are reserved to the time of
17 trial.

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G. AIRDAY

1 receive any other compensation from any other source other
2 than employment and Social Security?

3 A. No.

4 Q. When did you become a City marshal?

5 A. 1984.

6 Q. Were you employed prior to becoming a marshal in
7 1984?

8 A. Yes.

9 Q. What was your employment prior to becoming a City
10 marshal?

11 A. Federal probation and parole officer.

12 Q. Who was your employer?

13 A. It was at Southern District of New York.

14 Q. How long were you a Federal probation and parole
15 officer?

16 A. Approximately one year.

17 Q. Prior to working as a Federal probation and
18 parole officer, did you have any employment? Were you
19 employed prior to that?

20 A. Yes. I worked as a New York City probation
21 officer.

22 Q. How long were you a New York City probation
23 officer?

24 A. About seven years off and on.

25 Q. Prior to serving as a New York City probation

G. AIRDAY

1 officer, did you have any other employment?

2 A. Yes. I was a teacher in New York City.

3 Q. How long were you a teacher for New York City?

4 A. I lasted seven years.

5 Q. Who was your employer when you were a teacher in
6 New York City?

7 A. The New York City Board of Education.

8 Q. Were you ever disciplined in your prior periods
9 of employment?

10 A. No.

11 Q. Were you ever terminated from any prior position
12 of employment?

13 A. No.

14 Q. You said you became a City marshal in 1984; is
15 that correct?

16 A. Yes, correct.

17 Q. How did you obtain that position?

18 A. Obtain the position of City marshal?

19 Q. Yes. What was the process?

20 A. I filled out an application and about a
21 year-and-a-half later they called me for an interview.

22 Q. When did you fill out the application?

23 A. About two years before I became a City marshal.
24 Probably about 1982. '81/'82.

25 Q. Who called you for an interview, if you recall?

G. AIRDAY

1 A. I don't recall.

2 Q. They called you for an interview and you came in
3 and had an interview with whom?

4 A. I don't recall.

5 Q. Was it more than one interview?

6 A. I believe it was one interview and then followed
7 by other interviews before the Mayor's committee.

8 Q. How many interviews with the Mayor's committee?

9 A. One.

10 Q. Other than the two interviews, did you have to do
11 anything else in order to obtain the position as a City
12 marshal?

13 A. Say that again.

14 Q. Other than those two interviews, did you have to
15 do anything else in order to obtain the position of the
16 City marshal?

17 A. In order to obtain?

18 Q. Did you have background questions to fill out?

19 A. That was part of the application.

20 Q. Did you have to attend any training?

21 A. There was a brief training session.

22 Q. When you say brief, how long did it last?

23 A. Possibly two or three days.

24 Q. Did anybody else go through that training session
25 with you?

G. AIRDAY

1 A. Yea. There were maybe five or six other people.

2 Q. Who lead that training session?

3 A. I don't remember.

4 Q. Do you recall what position that person held?

5 A. You know, I don't recall actually.

6 Q. At some point you were informed that you had been
7 selected for a position as a City marshal; is that correct?

8 A. Yes. That was before the training session.

9 Q. How were you informed?

10 A. I believe I was sent a letter.

11 Q. Do you recall who sent that letter, who signed
12 the letter?

13 A. I don't recall.

14 Q. Was it the Mayor?

15 A. Well, Mayor sent congratulatory letter but I
16 don't know if there was another letter.

17 Q. The letter said you had been appointed to a
18 position as a City marshal; is that correct?

19 A. That's right.

20 Q. Did it identify what your badge number would be?

21 A. No. I don't think so.

22 Q. Were you ever assigned a badge number?

23 A. I was, yes.

24 Q. What badge number was that?

25 A. Number seven.

G. AIRDAY

1 Q. Is that the only badge number you ever held?

2 A. That's right.

3 Q. On being appointed to the position of City
4 marshal you had to file an oath of office; is that correct?

5 A. I had to do what?

6 Q. You had to sign an oath of office; is that
7 correct?

8 MR. SMITH: Objection to the form of the
9 question. You can answer it.

10 A. I don't recall.

11 Q. Did you have to obtain a bond? Do you know what
12 I'm talking about when I say that?

13 A. I eventually did get a bond but I don't know the
14 exact timing of it.

15 Q. Prior to becoming a City marshal had you ever
16 done any work for City marshals?

17 A. No.

18 Q. Upon being appointed to a City marshal did you
19 establish an office?

20 A. Well, I was a subtenant in another marshal's
21 office.

22 Q. When did you start being a subtenant in another
23 marshal's office?

24 A. Sometime after I was appointed.

25 Q. Who was that marshal?

G. AIRDAY

1 A. That was Jerry Shapiro.

2 Q. How did you know Jerry Shapiro?

3 A. I didn't. Just asked around.

4 Q. When you became a City marshal you asked -- you
5 were looking to be a subtenant in another marshal's office;
6 correct?

7 A. I was looking to find a City marshal to help me
8 learn the business and have a place where I could operate.

9 Q. Where was that office located?

10 A. He was at 16 Court Street, Brooklyn.

11 Q. When you were a subtenant in Mr. Shapiro's
12 office, what kind of work did you do?

13 A. I did whatever extra work that he had; that he
14 needed helped with. I would log tenants. Mostly that.

15 Q. Let me ask you more broadly what does a City
16 marshal do?

17 A. City marshal enforces the civil law.

18 Q. How so?

19 A. When there are judgment issues out of civil
20 court, housing court, City marshal will execute on the
21 order if the parties don't come to an agreement.

22 Q. I assume someone has to ask you to enforce the
23 order; correct?

24 A. You have to have an execution signed by either an
25 attorney or a judge.

G. AIRDAY

1 Q. Once an execution is signed by an attorney or a
2 judge can any marshal enforce it?

3 A. Yes.

4 MR. SMITH: That was okay but let him finish
5 his whole question because she needs to take down
6 his whole question before you answer.

7 THE WITNESS: I understand.

8 Q. You said when you first started working as -- or
9 when you were a subtenant in Marshal Shapiro's office you
10 were enforcing primarily what type of judgments?

11 A. Whatever work he had that he needed help with.
12 If he was -- if he was short at the time or he had more
13 work than he could handle.

14 Q. What type of judgments were you enforcing?

15 A. I think he had -- Shapiro had landlord/tenant
16 work.

17 Q. Are there other type of judgments that marshals
18 enforce?

19 A. Yes. They have property executions. They have
20 income executions. Replevin. Scofflaw enforcement program
21 which is another type.

22 Q. Any others that you can think of?

23 A. That's basically it. Over time the City issued
24 tax warrants. That was for a short time. That was one of
25 the assignments for marshals, to enforce tax warrants.

G. AIRDAY

- 1 Q. Did you ever do any property executions?
- 2 A. Yes.
- 3 Q. What about income executions?
- 4 A. Yes. That too.
- 5 Q. What about replevin?
- 6 A. Yes.
- 7 Q. Scofflaw?
- 8 A. Yes.
- 9 Q. What about tax warrants?
- 10 A. I did a few.
- 11 Q. How long were you a subtenant in Marshal
- 12 Shapiro's office?
- 13 A. A few months.
- 14 Q. When you were appointed as a City marshal were
- 15 you appointed for a specified term?
- 16 A. It was for a term of five years.
- 17 Q. You said you were a subtenant in Marshal
- 18 Shapiro's office for a few months; right?
- 19 A. Yes.
- 20 Q. Where did you go after Marshal Shapiro's office?
- 21 A. I was renting an office from another marshal.
- 22 Q. Who was that marshal?
- 23 A. Marchisotto.
- 24 Q. How do you spell that?
- 25 A. M-A-R-C-H-I-S-O-T-T-T-O.

G. AIRDAY

1 Q. That's the last name, Marchisotto?

2 A. Yes.

3 Q. Where was that office located?

4 A. I think he was in Brooklyn, 16 Court Street.

5 MR. SMITH: There's a list of marshals so we
6 get their names right.

7 Q. How long were you renting an office for Marshal
8 Marchisotto?

9 A. A few months. Six months maybe.

10 Q. After that period of time what did you do next?

11 A. Moved and rented an office in Manhattan.

12 Q. Were you renting that from another marshal?

13 A. No. This was rented together with another
14 marshal.

15 Q. Who was that marshal?

16 A. That was Al Mallah, M-A-L-L-A-H.

17 Q. How long were you renting that office?

18 A. Approximately a year.

19 Q. Did you have any employees at that time?

20 A. Yes.

21 Q. How many employees did you have?

22 A. I had one.

23 Q. What did that employee do?

24 A. She answered the phones. Prepared papers, and
25 helped me with my schedule.

G. AIRDAY

1 Q. What was her name, if you remember?

2 A. First name was Norma. I don't recall her last
3 name.

4 Q. You said you rented that office for approximately
5 one year. Where did you go after that?

6 A. I went to 40th Street.

7 Q. You rented an office on what street?

8 A. I'm sorry.

9 Q. You were renting an office on what street?

10 A. I was a subtenant of a lawyer who was renting an
11 office.

12 Q. Who was that lawyer?

13 A. Kostroff.

14 Q. How do you spell that?

15 A. K-O-S-T-R-O-F-F.

16 Q. How long were you a subtenant in that office?

17 A. A few years. Maybe four years approximately.

18 Q. What type of work were you doing when you were a
19 subtenant in that office?

20 A. I was doing scofflaw enforcement; income
21 executions. Property executions, and landlord/tenant.

22 Q. What is scofflaw enforcement?

23 A. Those people who are getting parking tickets and
24 fail to pay them within a fixed time, usually three months
25 or more. And once these tickets exceed the threshold, then

G. AIRDAY

1 they become scofflaw based on the Parking Violation
2 Bureau's data base.

3 Q. Do all marshals have access to the parking
4 violation data base?

5 A. No.

6 MR. SMITH: Objection. You can answer. The
7 answer was yes.

8 MR. SEACORD: No.

9 Q. Who has access to the parking violations data
10 base? I'm not asking for particular people.

11 A. Who is in the program for scofflaw enforcement?

12 Q. Who operates the scofflaw enforcement program?

13 MR. SMITH: Objection to the form. You mean
14 -- I mean -- I think you can rephrase that.

15 Q. The scofflaw enforcement program, is that what it
16 is called first of all?

17 A. They've changed the name slightly over time so
18 it's -- that's generally the term but the exact term has
19 changed over time.

20 Q. The scofflaw enforcement program, does that fall
21 within the purview of any New York City agency?

22 A. That has also changed. Most recently when I was
23 in the program it was under Department of Finance.

24 Q. Prior to being under the Department of Finance
25 who was in charge of the scofflaw program?

G. AIRDAY

1 A. I'm not sure. I think it was an independent
2 office. One point it was working with the sheriff's
3 office. I think it was independent.

4 Q. You said that only people in the program had
5 access to the Parking Violations Bureau data base; correct?

6 A. No. I didn't say that.

7 Q. What did you say?

8 A. Among the marshals.

9 Q. Only marshals?

10 A. Only those marshals who were in the program had
11 access to the data base of the program.

12 Q. How did a marshal get into the program?

13 A. He was selected and assigned to the program.

14 Q. Did a marshal have to apply to get into the
15 program?

16 A. Yes. I believe so.

17 Q. Did you apply?

18 A. I did apply.

19 Q. When did you apply to be in the scofflaw program?

20 A. When I became a marshal.

21 Q. What did a marshal have to demonstrate in order
22 to get into the program, if anything?

23 A. I'm not sure what the criteria that they are
24 using but I applied for every program that marshals
25 performed when I first became a marshal.

G. AIRDAY

1 Q. What other programs are there besides the
2 scofflaw program?

3 A. There's City housing evictions. That's one
4 program. And they had Con Edison, Brooklyn Union Gas that
5 did replevins. They had other programs from the Department
6 of Finance, income executions that were issued to garnish
7 salaries of debtors. They also had property executions but
8 I didn't get any of those things. With the exception of
9 landlord/tenant work every City housing, I did get that and
10 I performed it for a while.

11 Q. You said you at one point you were in the City
12 housing evictions program?

13 A. Yes. I was selected to do evictions and serve
14 paperwork at several housing projects.

15 Q. How long were you in that program?

16 A. Approximately three years.

17 MR. SMITH: Did you say three?

18 THE WITNESS: About three.

19 Q. Did you have to reapply for the program at
20 certain intervals?

21 A. No.

22 Q. You said you were in the program three years?

23 A. Approximately.

24 Q. Why were you no longer in the program?

25 A. You had to devote significant portion of your

G. AIRDAY

1 time as a marshal to do that. So it became impractical.

2 Q. You chose not to remain in the program?

3 A. Basically, yes.

4 Q. I mean you weren't told that you had to leave the
5 program; were you?

6 A. No, but we had some discussions about how much
7 time I would devote to these evictions. It was not
8 practical for me to do both evictions and scofflaw
9 enforcement.

10 Q. I don't want to put words in your mouth but you
11 essentially chose that you wanted to devote the majority of
12 your time to scofflaw enforcement; is that accurate?

13 MR. SMITH: Objection. You can answer.

14 A. I decided that I would focus on scofflaw
15 enforcement.

16 Q. You also mentioned Con Edison replevin program?

17 A. Yes.

18 Q. Were you in that program?

19 A. I was, yes.

20 Q. For how long?

21 A. I was off and on probably ten years.

22 Q. How long were you in the scofflaw enforcement
23 program?

24 A. Well, over time the scofflaw enforcement program
25 changed. But I have been doing scofflaw enforcement from

G. AIRDAY

1 about 1984 until there was a scandal in the City and the
2 program was halted for a few years and then it was
3 reconstituted in a different format. So then I joined the
4 program after a few months. I was assigned to an area.

5 Q. You said there was a scandal in the City, what
6 are you referring to?

7 A. There was a Parking Violations Bureau scandal
8 where all the scofflaw enforcement was basically halted.
9 Donald Manes killed himself. A big scandal in the papers.

10 Q. When was that?

11 A. It was about 1985 until 1989. That program was
12 essentially halted.

13 Q. What kind of work were you performing when the
14 scofflaw program was halted?

15 A. As far as I know that's it.

16 Q. What were you doing instead of that?

17 A. I was doing landlord/tenant work. Property and
18 income executions. Whatever work I could pick up.
19 Overflow work from other marshals.

20 Q. You said the program was reconstituted. How did
21 the program change after that, after that scandal?

22 A. Well, the marshals were given authority over
23 hiring tow companies and were essentially assigned areas of
24 enforcement.

25 Q. Certain marshals were assigned to certain areas

G. AIRDAY

1 of enforcement?

2 A. Correct.

3 Q. What do you mean by an area of enforcement?

4 A. For example, somebody was assigned part of
5 Brooklyn or part of Manhattan and they were supposed to
6 work only those areas.

7 Q. A geographic area?

8 A. Yea.

9 Q. Which areas were you assigned?

10 A. I was assigned upper Manhattan, Harlem,
11 Washington Heights.

12 Q. Was that throughout your period as a City marshal
13 or did that ever change?

14 A. Well, this began in 1990 and then subsequently I
15 had followed whatever rules they had. At one point they
16 allowed marshals who were in Manhattan to work all the
17 precincts according to some sort of a schedule and then
18 they returned marshals to just work in those precincts that
19 they were assigned. And at some point I was -- I requested
20 transfer to the Bronx from Manhattan to work Bronx
21 precincts.

22 Q. When did you request transfer to the Bronx?

23 A. That was about 2007 approximately. I don't
24 recall exactly.

25 Q. Why did you request transfer to the Bronx?

G. AIRDAY

1 A. There were -- there were more cars to work and
2 less traffic. So basically it was more productive.

3 Q. Who did you make that request to?

4 A. That was -- I spoke with Louis Jordan and Ken
5 Kelly.

6 Q. Who is Louis Jordan?

7 A. Louis Jordan is the director of scofflaw
8 enforcement.

9 Q. What agency is he with?

10 A. Department of Finance.

11 Q. Who is Ken Kelly?

12 A. Ken Kelly was the director of intergovernmental
13 affairs for the marshal's association.

14 Q. What is the marshal's association?

15 A. What is it?

16 Q. Yes.

17 A. It's an association of marshals.

18 Q. I mean is it a union?

19 A. It's an association. It's a nonprofit. It's not
20 a union.

21 Q. You were a subtenant at 40th Street you said for
22 about four years. Where did you go after that?

23 A. I went to Mosholu Avenue and opened an office at
24 5720 Mosholu Avenue.

25 Q. That's in the Bronx?

G. AIRDAY

1 another process involving an auction.

2 Q. Let's say a car was towed or impounded and then
3 the individual never paid the judgment, did that ever
4 happen?

5 A. Yes.

6 Q. In that case or on those occasions do you get
7 compensated in anyway?

8 A. Depends on whether there was a reason why the car
9 could not be redeemed or auctioned. There were occasions
10 when the car was reported stolen. There were occasions
11 when there was some other reason to put a hold on it. If
12 PVB made a mistake and the judgment was thrown out.

13 Q. Those occasions were you compensated?

14 A. In those cases I was not compensated.

15 Q. Let's say the car was auctioned then how were you
16 compensated?

17 A. Depending on the price at auction. If the price
18 was very low then there wasn't enough money left to pay
19 marshal fees. There's a bid report that had a formula for
20 who gets paid first and then so on.

21 Q. If a car is auctioned I assume the City gets paid
22 first?

23 A. No.

24 Q. Who gets paid first?

25 A. The expenses are paid first. The expenses for

G. AIRDAY

1 MR. SEACORD: Can I have this marked,
2 please?

3 (Whereupon, the aforementioned Document was
4 marked as Defendant's Exhibit A for
5 identification as of this date by the Reporter.)

6 Q. Mr. Airday, I'm handing you what's been marked as
7 Defendant's Exhibit A. Take a look at that and let me know
8 if you recognize it. (Handing.)

9 A. (Perusing.)
10 Yes.

11 Q. What do you recognize this to be?

12 A. This was a letter of reappointment.

13 Q. That letter is dated January 22, 2009; is that
14 correct?

15 A. Correct.

16 Q. Is that the reappointment you were just referring
17 to from Mayor Bloomberg?

18 A. Yes.

19 Q. Prior to receiving this letter, did you have to
20 go through any process in order to be reappointed?

21 A. I was required to submit an updated application.

22 Q. Did you have to do that the first time you were
23 reappointed as well?

24 A. Yes.

25 Q. With respect to the 2009 reappointment when did

G. AIRDAY

1 you submit the updated application?

2 A. You know, I don't know.

3 Q. Like in terms of the times, but how long before
4 you received this letter did you submit it?

5 A. Possibly as much as six months or more.

6 Q. Did somebody contact you and ask you to submit a
7 new updated application?

8 A. I'm not sure. I'm not sure. I think that
9 marshals's association with Ken Kelly's help organized
10 everybody to submit application.

11 Q. When you say everybody, you mean all the
12 marshals?

13 A. All the City marshals.

14 Q. Other than resubmitting an updated application do
15 you have to interview with anybody prior to this
16 reappointment?

17 A. I don't believe so.

18 Q. Did you have to meet with the Mayor's committee
19 on City marshals at all?

20 A. I think yes.

21 Q. You think yes you met with the Mayor's committee?

22 A. I believe so, yes.

23 Q. According to this letter you were reappointed for
24 a five year term expiring on December 31, 2016; is that
25 accurate?

G. AIRDAY

1 MR. SMITH: Is that your question?

2 Q. That's what is in the letter. I'm asking is that
3 your understanding?

4 MR. SMITH: I have an objection to the form
5 of that question.

6 Q. What was your understanding of the term of
7 appointment in 2009?

8 A. I was reading the letter and the letter basically
9 gives the terms.

10 Q. When you received this letter was it your
11 understanding you were being reappointed to a five year
12 term expiring on December 20, 2013?

13 A. Well, that's part of it.

14 Q. What's the other part?

15 A. That I had letters of this type over the years
16 and this was one step in the process but the marshal's
17 position was something that was a continuous position. It
18 did not -- it did the not stop at the end of the term of
19 appointment. It continued into a holdover status on a
20 number of occasions. We were not reappointed, we just
21 continue.

22 Q. It was your understanding that although your term
23 expired on December 20, 2013 you would remain as a
24 holdover?

25 MR. SMITH: Objection to the form. Answer

G. AIRDAY

1 it.

2 A. Correct.

3 Q. Did you say correct?

4 A. Yes, correct.

5 Q. We talked about the scofflaw program in which
6 judgments were enforced through towing process.

7 Did that process ever change to a booting
8 program?

9 A. It had changed, yes.

10 Q. When did that change?

11 A. Sometime after I stopped working in the previous
12 program I was suspended from that program.

13 Q. Wait. I don't understand.

14 A. So it became -- sometime in 2012 I believe it
15 became a booting program.

16 Q. Were you in the program at the time?

17 MR. SMITH: At that time.

18 Q. Sometime in 2012?

19 A. I started working as an associate marshal to --
20 the program was now run by the sheriff's department and it
21 had changed completely. I was working as an associate
22 marshal for the marshal, for different marshals as well as
23 for the marshal who was given my program.

24 Q. You were working as an associate marshal?

25 A. Not a program marshal.

G. AIRDAY

1 Q. What is the difference?

2 A. Program marshal is in charge of the -- the
3 program, the assigned areas and associate marshal works at
4 the pleasure of the program marshal when and if he's
5 needed.

6 Q. When were you working as an associate marshal?

7 A. When they asked me to cover.

8 Q. What period of time are we talking?

9 A. It had changed. It wasn't a specific schedule
10 but at one point Marshal Rivera was pregnant and she needed
11 somebody to cover for her on at least one day a week. So I
12 started doing that after the paylock program, after the
13 booting program began. This was on call. It was not a
14 regular assignment.

15 Q. You mentioned the paylock program; what is the
16 paylock program?

17 A. Paylock program was the booting program run by a
18 company called Paylock out of New Jersey. Private company.

19 Q. When did you first learn about the paylock
20 program?

21 A. Sometime around 2010, 2011.

22 Q. How did you learn about it?

23 A. Marshal's association was asked -- well, I
24 learned from the marshal's association president and the
25 executive director, Ken Kelly, of this plan, this pilot

G. AIRDAY

1 program.

2 Q. You learned from Ken Kelly or you learned from
3 Ken Kelly or somebody else?

4 MR. SMITH: Same person.

5 A. From Ken Kelly and somebody else.

6 Q. Who is that person?

7 A. That's the marshal's association. We had a
8 meeting and it was Ken Kelly who spoke. The president of
9 the association was also present.

10 Q. Who is the president of the association?

11 A. That's Locascio. His name is Al Locascio.

12 MR. SMITH: Let me get the spelling for the
13 court reporter.

14 MR. SEACORD: Okay.

15 MR. SMITH: L-O-C-A-S-C-I-O.

16 Q. Is Al Locascio a marshal?

17 A. Yes.

18 Q. Was Ken Kelly a marshal?

19 A. No. Ken Kelly is a retired police officer.

20 Q. You said there was a meeting where the marshals
21 were informed about the paylock program?

22 A. About the paylock program, yes.

23 Q. Were all the marshals present at that meeting?

24 A. I don't believe so, no.

25 Q. Did anyone voice any concerns at that meeting

G. AIRDAY

1 about the paylock?

2 A. Yes.

3 Q. Who?

4 A. Several of us. One is no more.

5 Q. You asked questions at the meeting?

6 A. Yes. We asked about the program.

7 Q. What did you ask?

8 A. We wanted to know how the program would work; how
9 it would change the existing program. We didn't know
10 anything about it.

11 Q. What did you learn about the program at that
12 meeting?

13 A. We learned that Finance department wanted to have
14 a pilot program. They wanted some marshals to volunteer.

15 Q. When you say Finance, you mean the Department of
16 Finance?

17 A. Department of Finance.

18 Q. They wanted to have several marshals volunteer
19 for a pilot program; correct?

20 A. Yes.

21 Q. Did any marshals volunteer?

22 A. No. Not to my knowledge?

23 Q. Did they go through with the pilot program?

24 A. Well, subsequently apparently they had started
25 the pilot program with the sheriff's department using

G. AIRDAY

1 deputy sheriffs and then I believe there were some marshals
2 that decided on their own to volunteer.

3 Q. Which particular marshals volunteered for the
4 pilot program?

5 A. I understand it was Locascio and what's the other
6 guy.

7 MR. SMITH: You can look at that.

8 A. Sergente. Locascio and another one.

9 MR. SMITH: With Mr. Seacord's permission,
10 if you want to look at this list. I'm not trying
11 to pry you but if you want to look at the list
12 which is a list of New York City marshals to
13 refresh your recollection, go ahead.

14 A. I believe it was Siracusa, the other guy.

15 MR. SMITH: That is spelled S-I-R-A-C-U-S-A.

16 Q. How long did that pilot program last, if you
17 know?

18 A. I think it was probably less than a year. It was
19 run by the sheriff's department so we're not fully familiar
20 with their arrangement.

21 Q. After that meeting where you learned about the
22 paylock program, did you discuss the paylock program with
23 any of the other marshals?

24 MR. SMITH: Objection to the form. You can
25 answer.

G. AIRDAY

1 A. Yes. We talked.

2 Q. Who did you discuss it with?

3 A. Other marshals who were involved in the scofflaw
4 program.

5 Q. How many other marshals were located in the
6 scofflaw program at the time?

7 A. I believe there were 11 program marshals.

8 Q. And were you a program marshal at the time?

9 A. That's right.

10 Q. Did you have concerns about the paylock program?

11 A. Yes.

12 Q. What were your concerns?

13 A. The paylock program seemed very loosely
14 structured in contrast to the existing scofflaw enforcement
15 program which is very highly structured.

16 Q. In what way did you think it seemed loosely
17 structured?

18 A. Well, marshals in the PVB scofflaw enforcement
19 program were required to follow PVB BOB standard operating
20 procedure which detail every step of the process including
21 copying information down, filling out the forms and
22 inventory of the vehicle. All of those things were missing
23 from this proposal.

24 Also learned that the actual booting process and
25 the execution process was handled by non-marshal staff. It

G. AIRDAY

1 wasn't handled by the marshal as we understood it to be
2 required under the law.

3 Q. Who was it that was handling the actual or who
4 would handle the actual booting process under the proposal?

5 A. Well, initially we didn't have any clear cut
6 answers to any of these questions. So later on I learned
7 that it was paylock employee that was assigned this role,
8 not the marshal.

9 Q. How did you come to learn that a paylock employee
10 would be working?

11 A. When I worked as an associate marshal and I went
12 to the meeting at the sheriff's office and later on I was,
13 I was in the vehicle and I observed how it worked.

14 Q. Did a marshal accompany the paylock employee when
15 they performed that booting program?

16 A. Marshal was present at the location. By the
17 computer operation, the entering of judgment with the key
18 stroke, all of that was done by the paylock employee in
19 violation of what our understanding was.

20 Q. What was the role of the marshal in that process?

21 A. That was an open question. It seemed as if his
22 role was just to be present and to accompany paylock
23 employee.

24 Q. On the times when you did accompany a paylock
25 employee what did you do, if anything?

G. AIRDAY

1 A. I verified the license plates based on what the
2 paylock employee said was on his screen. I looked at the
3 license plate. And essentially there wasn't much else.

4 Q. Did you have concerns about the paylock program?
5 Did you voice those concerns to anybody, to either Ken
6 Kelly or --

7 A. Yes. I voiced my concerns to a number of people
8 especially Ken Kelly and the other marshals in the program.

9 Q. What did you say to Ken Kelly?

10 A. Well, I had reviewed the proposal at the
11 Department of Finance's offices and they wouldn't let me
12 have a copy but I made some notes and I told them that this
13 is a very unstructured poorly designed program that seems
14 to violate the rules.

15 Q. When did you review the proposal at the DOF's
16 office?

17 A. Sometime in March of 2012, I think.

18 Q. When you reviewed the proposal, how did you go
19 about doing that? Did you show up at the DOF office and
20 ask to look at the proposal?

21 A. No. I spoke to the lobbyist, a guy name Skip
22 Piscatelli and he told me when he's going to be available
23 for viewing and I went to the Department of Finance and I
24 asked to see it.

25 Q. What was the location?

G. AIRDAY

1 A. It was the DOF's office. I think it was in the
2 Municipal building.

3 Q. Did any other marshals go view the proposal?

4 A. Not to my knowledge.

5 Q. Did anybody accompany you when you went to view
6 the proposal?

7 A. No.

8 Q. After viewing the proposal you said you spoke
9 with Ken Kelly?

10 A. I spoke with Ken Kelly and I spoke with the other
11 marshals at our next meeting which was held in -- I believe
12 it was held in the association counsel's office.

13 Q. How frequently did the marshal's association have
14 meetings?

15 A. As the circumstances warrant; otherwise, it was
16 approximately monthly. Sometimes they took a break.
17 Sometimes they had a few extra meetings to certain events.

18 Q. When you spoke at the meeting regarding the
19 paylock proposal, what did you say?

20 A. Well, I expressed my concerns to the other
21 marshals. That this did not seem to be in keeping with
22 what we were used to, a very strict guidance on what
23 marshals have to do and what their responsibilities are and
24 where the lines of authority extend from the marshal to
25 supervise the impoundment of these vehicles.

G. AIRDAY

1 Q. Did any of the other marshals share your
2 concerns?

3 A. A few of them said that they thought this was not
4 going to be very good thing for us. That this would create
5 problems on the street and in the courts. Say it's
6 illegal.

7 Q. Did any of the marshals think it was a good
8 proposal?

9 A. Not to my knowledge, no.

10 Q. Did Ken Kelly say anything in response to you
11 when you voiced these concerns?

12 A. He told me that I should not be too outspoken.

13 Q. Did he express why he believed you shouldn't be
14 too outspoken?

15 A. He said this is going to be implemented with or
16 without our cooperation as far as he knew.

17 Q. Other than Ken Kelly and the other marshals, did
18 you discuss the paylock proposal with anyone else?

19 A. You are asking me if they discussed it with other
20 people?

21 Q. No. If you discussed it with other people?

22 A. I'm sorry.

23 Q. Other than speaking with Ken Kelly and the other
24 marshals, did you discuss the paylock proposal with anyone
25 else?

G. AIRDAY

1 A. Yes, I did.

2 Q. With who?

3 A. Well, I spoke with a few political contacts that
4 I had in my local councilman's office. I called
5 controller's office and a few other political contacts that
6 I've had with elected officials.

7 Q. Who was the councilman you spoke with?

8 A. Keoppel.

9 Q. How do you spell that?

10 A. K-E-O-P-P-E-L, Keoppel.

11 Q. Is that a male or female?

12 A. That's a male.

13 Q. What is his first name?

14 A. I don't remember.

15 Q. What did you say to him?

16 A. I told him that it would be a good idea if he and
17 the City Council looked into this proposal that seems to be
18 -- to be a way off the reservation. He told me he'll look
19 into it.

20 Q. When did you speak with him?

21 A. Well, I saw him frequently. He lived in my
22 district. He had an office right nearby. So I spoke to
23 him on a few occasions. I don't know exactly. He was --
24 it was sort of a casual thing. He was not directly
25 involved in deciding things one way or the other. So I

G. AIRDAY

1 told him and wanted to know if he was interested in looking
2 into it.

3 Q. Was this before or after you had viewed the
4 proposal?

5 A. This was probably before and after.

6 Q. Where were you when you spoke with him?

7 A. I spoke to him on the street. I used to see him
8 pretty much every day on Riverdale Avenue right in front of
9 his office.

10 Q. Both times or maybe it was more than two times on
11 the occasion when you did discuss it with him, you were on
12 the street in front of his office on Riverdale Avenue?

13 A. Yes.

14 Q. What did he say in response, if anything?

15 A. He said that he'll look into it.

16 Q. You mention that you spoke with someone else but
17 who else did you speak with?

18 A. John Liu, the comptroller. I spoke to his
19 office. I didn't speak to him personally. L-I-U.

20 Q. Who in the comptroller's office did you speak to?

21 A. I'm trying to recall. Somebody in the contracts
22 department, I think. The auditing contracts is what I
23 recall.

24 Q. Was that a telephone conversation?

25 A. Yes. It was several telephone conversations.

G. AIRDAY

1 Q. When were those telephone conversations?

2 A. I'm sorry.

3 Q. When were those telephone conversations?

4 A. This was around the time after I reviewed the
5 proposal, the proposed contract.

6 Q. What did you say to the person in the
7 comptroller's office you spoke with?

8 A. I asked them if they had any information about
9 this contract; if they were aware of it. And that it seems
10 as if there's a problem with this proposed contract.

11 Q. What problem did you believe there was with the
12 proposed contract?

13 A. What's that?

14 Q. You said that you told them it appears there was
15 a problem with the proposed contract. What was the problem
16 or problems you believed there were?

17 A. Well, that it was -- it was that proposal that
18 wasn't appropriate to the program. That there's a
19 likelihood of if future PVB scandals in the City if
20 something like this is approved and I also learned that the
21 comptroller was against several contracts. I didn't know
22 if he was aware of this one but I asked them if needed more
23 information and that I was willing to discuss what
24 information I had with them.

25 MR. SMITH: Can you read that back?

G. AIRDAY

1 (Whereupon, the referred-to answer was read
2 back by the Reporter.)

3 Q. Did the person you spoke with say anything in
4 response?

5 A. That they will get back to me.

6 Q. Did they get back to you?

7 A. They did not get back with anything else.

8 Q. You said after the first call you spoke with
9 someone again at the comptroller's office; correct?

10 A. Say it again.

11 Q. You said there were several calls with the
12 comptroller's office?

13 A. Yes. I called up. I followed them.

14 Q. When you followed up what did you say?

15 A. I told them I was waiting for them to contact me
16 and gave them my information and suggested that this is
17 important; that they should look into it further. And the
18 person there said they will put me on hold and they would
19 -- said they are going to check to see if they have any
20 record of this contract and -- and they didn't find any
21 record so they took down my information and I waited for
22 them to correspond with me about it.

23 Q. Did you ever speak with them again after that?

24 A. At some point there was nothing further. They
25 didn't call me back and I didn't -- I called them a couple

G. AIRDAY

1 of times after that but didn't get through to any official
2 within the comptroller's personal office.

3 Q. Did you ever speak with anyone at DOI about the
4 paylock proposal?

5 A. DOI?

6 Q. Department of investigation?

7 A. I did not, no.

8 Q. Who oversees the City marshal program?

9 MR. SMITH: Objection to the form of that.
10 What do you mean the City marshal program? Do
11 you mean the scofflaw program?

12 Q. City marshals?

13 A. City marshals are supervised by the director of
14 marshal bureau.

15 Q. Between 2009 and 2013 who was the director of
16 marshal's bureau?

17 A. It was Keith Schwam.

18 Q. Did you ever speak to Keith Schwam about the
19 paylock proposal?

20 A. No, I did not.

21 Q. What about Department of Finance, did you speak
22 to anyone at the Department of Finance regarding the
23 paylock proposal?

24 A. I spoke about the paylock program. I think this
25 was some conversation with Louis Jordan.

G. AIRDAY

1 Q. When did you have a conversation with Louis
2 Jordan?

3 A. I spoke to him about getting back my own program
4 being assigned but in that conversation I also asked him
5 how this paylock business is going.

6 Q. This was after the program had already -- paylock
7 program was already in place?

8 A. It was -- it was in the process of being fully
9 setup. It had already started.

10 Q. You said you were speaking to him about getting
11 back your program?

12 A. Yes.

13 Q. What do you mean by that?

14 A. To be assigned to my area to be a program marshal
15 again.

16 MR. SEACORD: Do you want to break for
17 lunch?

18 MR. SMITH: Well, how much longer are you
19 going to be?

20 MR. SEACORD: Enough so that we should
21 probably break for lunch. This is a good place
22 to stop right now.

23 MR. SMITH: Let's take a lunch break.

24 (Whereupon, a short recess was taken.)

25 Q. Welcome back. I want to switch gears a little

G. AIRDAY

1 Q. If you remember?

2 A. I believe at that point I had four guns.

3 Q. Were those all registered on the license?

4 A. The guns that I was aware of I registered, the
5 ones on the license. I also had one gun that I didn't have
6 that was also on the license. It had been stolen and
7 reported stolen but though -- the Police Department showed
8 that as under my name.

9 Q. How many guns were actually registered on the
10 license?

11 A. I think it was five but I've had some
12 transactions in the meantime so I'm not 100 percent
13 certain. I had sold guns and bought guns. I had one gun
14 that was stolen.

15 Q. As far as the Hawes pistol is concerned, was that
16 ever registered?

17 A. No. Hawes pistol was stuck someplace in the back
18 of my safe and I haven't looked at it and thought about it.
19 I had forgotten it. Never used it. Didn't have bullets
20 for it. Never fired it.

21 Q. What kind of safe are we talking about? Is this
22 a gun safe?

23 A. It's a regular safe.

24 MR. SMITH: What does regular safe mean?

25 THE WITNESS: It's a safe. It's a steel

G. AIRDAY

1 safe for valuables. It had a couple of shelves.
2 It had holes at the bottom to attach to the
3 floor. It had a key punch locking mechanism.
4 And I kept valuables. Jewelry; papers. Some
5 things from my father was in there. Cigarette
6 case. A bunch of odds and ends.

7 Q. Approximately how big is the safe?

8 A. I would say about two foot cube is the
9 approximate size.

10 Q. Going back to Exhibit D which is the property
11 clerk invoice when did you receive this?

12 MR. SMITH: I don't know if he ever said he
13 did.

14 Q. If at all?

15 A. I'm not sure when I first saw this.

16 Q. But did you see it at some time?

17 A. Well, I saw it at some time when I was looking to
18 get my guns inventoried.

19 Q. What do you mean that you were looking to get
20 your guns inventoried?

21 A. Well, it was about a month later there was
22 another -- I was arrested again for not having one of my
23 guns turned in, which I was under the impression was taken
24 along with the other guns.

25 Q. Was that on January 18, 2012 when you were

G. AIRDAY

1 arrested the second time?

2 A. I believe so, yes.

3 Q. How did that arrest come about?

4 A. I got a call from Police Licensing Bureau and I
5 tried -- I was working at that time so when I got that call
6 in my office and first chance I had I called them back but
7 I wasn't able to contact the caller. I think it was an
8 officer at the Licensing Bureau and then a detective came
9 by my office and insisted that I meet him. So at that
10 point this question came up as to what happened to that
11 other gun.

12 Q. Where did you meet the officer?

13 A. I met him by my office downstairs at 5720 Mosholu
14 Avenue.

15 Q. What did he say when he met with you?

16 A. Well, he was -- he was agitated. I was surprised
17 at how agitated he was. He demanded that the gun was
18 missing and that he needed to know -- he don't know what
19 happened. So I told him that I'm more than happy to
20 cooperate and I invited him to come up with me to my
21 apartment and to look inside my safe which is where my guns
22 were. So he did that and I opened the safe for him and let
23 him look inside and he found in the back under some other
24 things a gun that the first officer overlooked.

25 Q. This was a different officer?

G. AIRDAY

1 A. Yes, it was a different officer. This guy is a
2 detective.

3 Q. Is that correct Christopher Boerke?

4 A. I think, yea. B-O-E-R-K-E. I don't know how he
5 spells his name but that's the one.

6 Q. After he found the gun, what happened then?

7 A. Well, he arrested me. I voluntarily went with
8 him. I cooperated and went to the precinct.

9 Q. How long where you at the precinct?

10 A. I was there a couple of hours, I think. A couple
11 of hours. And I told them that I was -- I told the
12 officer, one of the officers working in the precinct that I
13 was having some chest pains and eventually they called an
14 ambulance and they took me to a hospital nearby.

15 Q. How long were you at the hospital?

16 A. Until the next morning.

17 Q. When you left the hospital did you have to return
18 to the precinct?

19 A. I was under a guard so I was -- I was basically,
20 you know, still under the control of the police officers so
21 I went with the officer that came to get me.

22 Q. Were you arraigned?

23 A. Yea.

24 Q. Were you released on bail under your own
25 recognizance?

G. AIRDAY

1 A. I was ROR'd.

2 MR. SMITH: You were what?

3 THE WITNESS: Released on my own
4 recognizance, ROR.

5 MR. SEACORD: Can I have that marked.

6 (Whereupon, the aforementioned Document was
7 marked as Defendant's Exhibit F for
8 identification as of this date by the Reporter.)

9 Q. I'm handing you what's been marked as Defendant's
10 Exhibit F. Please take a look at that and let me know if
11 you recognize it. (Handing.)

12 A. (Perusing.)

13 They spelt (sic) my name wrong. Jorge. I
14 recognize it.

15 MR. SMITH: No Hungarian spelling?

16 THE WITNESS: Not even. Maybe Spanish. The
17 gun is also not a Berringer. It's a Derringer.

18 Q. Correct.

19 A. But that's not the name of the gun, it's a type
20 of gun.

21 Q. Right. So the type of gun that was found in the
22 safe the second time, what type of gun was that?

23 A. The model -- the model is a high standard 22
24 Cobra Derringer. Two shot Derringer.

25 Q. Was that gun registered?

G. AIRDAY

1 A. Yes.

2 MR. SMITH: Did you say three shot?

3 THE WITNESS: Two shot.

4 Q. Do you recognize that document, Exhibit F?

5 A. Yea. I don't know where I saw it but --

6 Q. It indicates the you were charged with the
7 offense of criminal attempt. Is that the offense you were
8 charged with?

9 A. Yes.

10 Q. Prior to arrest on December 21, 2011 did you
11 carry a gun when you were working as a marshal?

12 A. Yea, I did.

13 Q. Which gun did you carry?

14 A. I usually carried the HK 40 caliber.

15 Q. That's the Heckler & Koch?

16 A. Heckler & Koch.

17 Q. Taking a look again, I think it's Exhibit D.

18 MR. SMITH: D.

19 Q. Of the guns listed on that invoice?

20 A. Right.

21 Q. Which ones did you carry when you were a marshal?

22 A. I just said Heckler & Koch. That's what I
23 usually carry.

24 Q. Were there others that you carried when you
25 weren't carrying that one?

G. AIRDAY

1 and Second Judicial Departments."

2 Do you see that?

3 A. Yes.

4 Q. Were you suspended from your services as a
5 marshal on or about that time?

6 A. I was working in the field on this day and two
7 detectives from DOI came by and give me the papers and I
8 gave them my badge and ID card.

9 Q. What day was that?

10 A. What day was it?

11 Q. Yes.

12 A. I don't know exactly. At that was most likely --
13 it was the same day, June 11th. I'm not sure.

14 Q. After you gave them your badge and ID card, I
15 assume that you stopped working as a marshal?

16 A. I stopped working as a marshal. I took the signs
17 down from my office and I closed the gates and sent my
18 staff home.

19 Q. How many staff did you have at the time?

20 A. Two or three. I had family members that were
21 helping out.

22 Q. Between your arrest on January 18, 2012 and the
23 time that you were served with this order and suspended,
24 what type of work were you performing as a marshal?

25 A. Well, I was working as an associate in the

G. AIRDAY

1 booting program. I was doing income and property
2 executions and some landlord/tenant work as well as small
3 claims work. Other marshals were sending me work that they
4 didn't have time for or didn't want to do. Most people are
5 calling me up based on my website and prior contacts.

6 Q. What website are you referring to?

7 A. I had a City Marshal George Airday. There was a
8 website.

9 Q. You said people were calling you up. Who was
10 calling you?

11 A. People were calling me based on their internet
12 searches and other sources of referral.

13 Q. When you say people, are you talking about other
14 marshals?

15 A. Or respondents. Plaintiffs. Attorneys. Several
16 different categories.

17 Q. They were calling you for what purpose?

18 A. They were calling me to do their executions.
19 Other marshals were calling me to execute on their work and
20 plaintiffs called me to collect on judgments.

21 Q. How did that differ from what you were doing
22 prior to your arrest?

23 A. The difference was that instead of being a
24 program marshal I was now working as a fill-in marshal for
25 people that used to be my fill-in marshals. My role

G. AIRDAY

1 A. No. I don't think so.

2 Q. But you believe that there was correspondence
3 between your attorney and DOI's attorney; correct?

4 A. Yea. There was correspondence and everybody
5 apparently agreed. DOI wanted, I don't know, they wanted
6 me to pay some kind of a huge fine like \$20,000 and we kind
7 of negotiated it down. You know, they wanted to get their
8 pound of flesh. They apparently didn't just want to just
9 lose the case so they wanted to have me agree to plead
10 guilty to some administrative charge, not cooperating with
11 DOI.

12 MR. SEACORD: Can we take a break?

13 MR SMITH: Okay.

14 (Whereupon, a short recess was taken.)

15 MR. SEACORD: Can I have this marked,
16 please?

17 (Whereupon, the aforementioned Document was
18 marked as Defendant's Exhibit L for
19 identification as of this date by the Reporter.)

20 Q. I'm handing you a document that's been marked as
21 Defendant's Exhibit L. It's a three page document Bates
22 numbered D000297 through 299. Please take a look at that
23 and let me know if you recognize it? (Handing.)

24 A. (Perusing.)

25 MR. SMITH: Off the record.

G. AIRDAY

1 (Whereupon, an off-the-record
2 discussion was held.)

3 MR. SMITH: Are you familiar with this or
4 better yet, is that your signature on the last
5 page?

6 MR. SEACORD: I'm going to get there.

7 Q. Are you familiar with this document? Have you
8 seen this?

9 A. Yes.

10 Q. Turning to the last page underneath the date,
11 which is May 20, 2013, there's a signature above the name
12 George Airday; is that your signature?

13 A. Yes.

14 Q. You signed this document?

15 A. I did.

16 Q. Again for the record, the document is entitled
17 stipulation. It's got an oath index of 1620/13. I want
18 you to turn to the second page down towards the bottom. It
19 says "it is hereby stipulated and agreed by and between DOI
20 and Marshal Airday", paragraph one, "Marshal Airday agrees
21 to fully cooperate with DOI's investigation of his conduct,
22 including giving full and complete testimony under oath."

23 Do you see that?

24 A. Yes.

25 Q. Did you subsequently give testimony under oath?

G. AIRDAY

1 A. I did.

2 Q. When was that?

3 A. That was, I think, June 11th I believe sometime.

4 June 11th or June 12th.

5 Q. Of 2013; correct?

6 A. Yes.

7 Q. Where did that occur?

8 A. DOI's offices.

9 Q. Who was present?

10 A. Schwam. Caroline Alejandro. Howard Sterinbach,

11 S-T-E-R-I-N-B-A-C-H.

12 Q. And Howard Sterinbach, that was your attorney at

13 the time?

14 A. He was one of the attorneys for the law firm that

15 I retained.

16 Q. Were you asked questions during that time period?

17 A. Yes. I was asked basically one question over and

18 over again.

19 Q. Who asked the question?

20 A. Schwam.

21 Q. What was the question that you were asked?

22 A. What happened to the gun. Where was the gun.

23 How come I didn't turn it in. And where did I get it from.

24 Q. How did you respond?

25 A. I told him where I got the gun from. I answered

G. AIRDAY

1 his questions. I answered it each time he asked me I
2 answered his question.

3 Q. What did you tell him about where you got the
4 gun?

5 A. I told him who gave me the gun, the gun that was
6 not on the license.

7 Q. What did you tell him? You told him what with
8 regard to who gave you the gun?

9 A. I told him who gave me the gun and I told him
10 where I kept the gun.

11 Q. Yes.

12 A. And he asked me why it wasn't registered and I
13 told him it was in the safe and I hadn't seen it or looked
14 at it for all these years and I had forgotten about it.

15 Q. When you say the gun, which gun are you referring
16 to?

17 A. The one that is not registered -- the one that
18 wasn't registered.

19 MR. SMITH: The Hawes 25 caliber.

20 MR. SEACORD: I can't have you testify.

21 MR. SMITH: You want to get out the
22 documents. Here.

23 MR. SEACORD: Just to make sure.

24 MR. SMITH: How about that one.

25 MR. SEACORD: Knock it off.

G. AIRDAY

1 identification as of this date by the Reporter.)

2 Q. I'm handing you what's been marked as Defendant's
3 Exhibit M. It's a one page document entitled joint
4 administrative order 013-5.

5 Please take a look at that and let me know if you
6 recognize it? (Handing.)

7 A. (Perusing.)

8 Yes.

9 Q. What do you recognize that to be?

10 A. Well, this is the order lifting my suspension and
11 dismissing the charges.

12 Q. And it's dated June 6, 2013? Well, June 5, 2013?

13 A. Right.

14 Q. After that date did you resume activity as a City
15 marshal?

16 A. Did I what?

17 Q. Resume work as a City marshal?

18 A. No. I had to, as agreed, to answer the questions
19 that Schwam put to me.

20 Q. After you answered the questions or testified
21 under oath at DOI, did you resume work as a City marshal?

22 A. Yea. Schwam gave Caroline my badge and ID card
23 after the interview with me and at that point I resumed
24 work as a marshal. To get everybody back to work and
25 contact marshals and possible clients and so on, to start

G. AIRDAY

1 year on March 15th. It had to be sent to DOI.

2 Q. What were you required to include in that report?

3 A. I was required to include copies of bank
4 statements and also assessment fees which was 4.5 percent
5 of my gross income plus \$1,500 as I'd say "franchise fee
6 for being a marshal".

7 Q. Anything else you were required to include in
8 that report?

9 A. Well, if there was any unclaimed funds we had to
10 write a check for that. Basically it's a very complex
11 lengthy report. So it has numerous items that are
12 required.

13 Q. Your five year term as a marshal expired on
14 December 20, 2013; is that correct?

15 A. That was the date, yes.

16 Q. What happened after your term expired?

17 A. Well, I found an envelope underneath the gates to
18 my office from Schwam telling me that my badge has been
19 reassigned to someone else.

20 Q. When did you find that?

21 A. Some time after the date of termination of my
22 appointment, I got a phone call from Marshal Schwam on my
23 cell phone telling me that I should get -- I should go
24 there and go to my office and check underneath the gate
25 because it's an important message for me.

G. AIRDAY

1 looking at it the worse it looked. There's no basis for
2 doing this sort of thing with paylock.

3 Q. Did you raise all of these concerns with all of
4 the people you previously identified that you were raising
5 these concerns?

6 A. I raised most of them. I wasn't -- some of these
7 details about how the operational part of it was weak was
8 not emphasized with the political people that I contacted
9 because they would not be interested and they would have to
10 learn about the way the program is done. It's too much
11 detail. Despicable to that level of interest.

12 CONTINUED EXAMINATION BY

13 MR. SEACORD:

14 Q. When you say the political people, which concerns
15 did you raise with the political people?

16 A. Political people were that it was an improper
17 contract. It was not properly designed and that the
18 program is a mistake and the fact that it was done without
19 open bid by itself is already a red flag in the political
20 realm.

21 Q. How did you come to learn that it was a no bid
22 contract?

23 A. Well, I heard this from Piscatelli, Ken Kelly,
24 and then subsequently when I tried to research it online,
25 it came up as a no bid contract. It was never publicized,

G. AIRDAY

1 so they didn't have hearings and didn't seem like this is
2 such a drastic change from long existing program. It
3 seemed very improper from my point of view.

4 Q. Did you ever speak with David Frankel about the
5 paylock program?

6 A. I never spoke with him, no.

7 Q. Did you ever speak to him about anything?

8 A. Never spoke to him about anything. He was not --
9 he was not available to people on my level so I did not.

10 Q. At any time did anybody tell you that you would
11 be permitted to holdover or be reappointed upon the
12 expiration of your term December 2013?

13 MR. SMITH: Objection. Go ahead.

14 A. Not explicit.

15 Q. Did somebody tell you?

16 A. It was my understanding that once I'm clear of
17 this deal that I would be restored and work as a marshal.
18 And in the past I've always been either reappointed or kept
19 as a holdover.

20 MR. SEACORD: Can you give me two seconds.

21 (Whereupon, a short recess was taken.)

22 Q. Is it your belief that you were not reappointed
23 or that you were replaced as a marshal because you raised
24 certain questions about the paylock program?

25 A. Yes.

G. AIRDAY

1 the hours that he was questioning me before returning my
2 badge he was visually agitated. His hands were shaking.
3 My attorney was telling me that this is something very
4 bizarre. He doesn't understand it. I don't understand it
5 either. But there was apparently something Schwam felt
6 that I was not humble or submissive sufficiently for his
7 purposes. So I'm surmising it.

8 I don't know the factual basis except the paylock
9 was the main thing and the fact that I was fighting back
10 against him not cooperating by resigning. Not going away
11 quietly. That was something that made him angry and
12 annoyed at me.

13 Q. Did you ever learn what Schwam's opinion on the
14 paylock program was?

15 A. He never told me personally and I don't -- I
16 don't have any insight.

17 MR. SEACORD: That's all I have. I don't
18 have anything else. Do you have anything?

19 MR. SMITH: No. No.

20 (Whereupon, at 5:45 P.M., the Examination of
21 this Witness was concluded.)

22 o o o o

23

24

25

G. AIRDAY

C E R T I F I C A T E

STATE OF NEW YORK)
 : SS.:
COUNTY OF RICHMOND)

I, JOANNE CAPPARELLI, a Notary Public for and
within the State of New York, do hereby certify:

That the witness whose examination is
hereinbefore set forth was duly sworn and that such
examination is a true record of the testimony given by that
witness.

I further certify that I am not related to any
of the parties to this action by blood or by marriage and
that I am in no way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have hereunto set my hand
this 19th day of April 2017.



JOANNE CAPPARELLI

EXHIBIT B

20180110
L.C. Brown

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
GEORGE AIRDAY,

Plaintiff,

- against -

14-cv-8065 (RWS)

THE CITY OF NEW YORK, KEITH SCHWAM
and DAVID M. FRANKEL,

CERTIFIED COPY

Defendants.
-----X

DEPOSITION OF KEITH SCHWAM, taken by
Plaintiff, pursuant to Notice, at the Law Offices of
Nathaniel B. Smith, on Thursday, March 30, 2017,
commencing at 10:48 a.m., before Chandra D. Brown, a
Registered Professional Reporter and Notary Public
within and for the State of New York.

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A P P E A R A N C E S:

LAW OFFICES OF NATHANIEL B. SMITH

Attorneys for the Plaintiff

80 Broad Street

New York, NY 10004

By: NATHANIEL B. SMITH, ESQ.

natbsmith@gmail.com

(212) 227-7062

NEW YORK CITY LAW DEPARTMENT

Attorneys for the Defendants

100 Church Street

New York, NY 10007

By: CHRISTOPHER SEACORD, ESQ.

cseacord@law.nyc.gov

(212) 356-2444

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A P P E A R A N C E S (Continued):

**NEW YORK CITY DEPARTMENT OF
INVESTIGATION
Attorneys for the Defendants
80 Maiden Lane
New York, NY 10038**

By: MICHAEL B. SILLER, ESQ.

msiller@doi.nyc.gov

(212) 825-0646

ALSO PRESENT:

George Airday

DEPARTMENT
OF INVESTIGATION
RECEIVED
APR 27 2017
10 11 PM '17

2017 APR 27 AM 11:30

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1
2 IT IS HEREBY STIPULATED AND AGREED, by and
3 between the attorneys for the respective parties
4 hereto, that this examination may be sworn to before
5 the notary public.

6
7 IT IS FURTHER STIPULATED AND AGREED that
8 the signing and filing of the said examination shall
9 not be waived.

10
11 IT IS FURTHER STIPULATED AND AGREED that
12 all objections to questions, except as to form,
13 shall be reserved for trial.
14
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2 background, your work experience background
3 during the course of that deposition.

4 I don't know want to plow over that ground
5 again, unless you think there was something in
6 the background information that you gave me
7 last time that was inaccurate.

8 A I don't think it was inaccurate.

9 Q Okay.

10 So when I left off with you last, you were
11 the Director of the Marshal Bureau for
12 Department of Investigations; is that right?

13 A Yes.

14 Q When did you start that position?

15 A 1995.

16 Q Before that, were you working for the
17 Department of Sanitation?

18 A I was working as the Department of
19 Sanitation IG for the Department of
20 Investigation.

21 Q Okay.

22 And so you were the Director of the
23 Marshals Bureau from 1995 until when?

24 A The end of January 2014.

25 Q And why did you leave that position?

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2 call for the production of those e-mails.

3 MR. SEACORD: We'll take it under
4 advisement.

5 BY MR. SMITH:

6 Q Who from the Department of Finance were
7 you corresponding with?

8 A I was speaking with Andrew Salkin, who was
9 the First Deputy Commissioner at the time. I
10 may have had correspondence from him or people
11 on his staff.

12 Q Did you ever speak to Commissioner Frankel
13 about PayLock?

14 A Yes.

15 Q Did you speak with Commissioner Frankel
16 about PayLock before the contract was signed?

17 A Yes.

18 Q Who else did you speak to about PayLock
19 before the contract was signed?

20 A You're not limiting that to the Department
21 of Finance?

22 Q No. I'm not limiting it at all.

23 A I spoke with a number of people regarding
24 the PayLock proposal.

25 Q Okay. I would like to know who they were.

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2 A I don't know that I'll remember all of
3 them. I'll tell you the ones that come to
4 mind.

5 Louis Jordan, Ken Kelly, Andrew Salkin,
6 colleagues within DOI, Frank Siracusa,
7 Steve Biegel, Jeffrey Rose very briefly.
8 Sorry. Excuse me. Not Jeffrey Rose.

9 Q The other one.

10 A Gary Rose.

11 Q Just so you know, I have a list of the
12 marshals. It was a document that I showed you
13 at your deposition that came out of your
14 office. It was a list of all the marshals.

15 If you want to look at that to refresh
16 your recollection, let me know and I'll provide
17 it to you.

18 Okay. So it's Gary Rose briefly.

19 Anybody else?

20 A Not that I recall at the moment.

21 Q What do you recall discussing with Andrew
22 Salkin about PayLock?

23 A Issues about how the program would
24 actually work. There were revenue issues.
25 There was a period of time when PayLock

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2 greater volume than the company had handled in
3 other locations in which it was booting
4 vehicles.

5 Q Did Kelly have any other issues or
6 concerns about the PayLock proposal?

7 A I don't know. He may have. That's what I
8 remember his concern being.

9 Q Did Kelly object to the PayLock proposal?

10 A Well, the Marshals objected as a group.
11 Whether Ken Kelly was their spokesperson on
12 that, I don't recall.

13 Q So while the PayLock proposal was being
14 considered, Ken Kelly raised concerns with you
15 as the Executive Director of the Marshals
16 Association, right?

17 A In Ken's role, yes, as executive director,
18 yes.

19 I should add, now that we mentioned Ken
20 Kelly, there was also Ken Litwack who was the
21 attorneys for the Marshals Association, and he
22 expressed some of the same concerns that I
23 mentioned previously.

24 Q How long had you known Ken Kelly?

25 A I believe Ken Kelly was a staff member

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2 the conclusion that they had to accept the
3 PayLock structure?

4 MR. SEACORD: Objection.

5 A I'm going to say approximately 2012 at
6 some point, maybe 2012, early 2013, around
7 then.

8 Q Do you know if there were any other
9 marshals who continued to maintain an objection
10 to the PayLock system?

11 A No.

12 Q Do you know if George Airday ever
13 maintained his objections to the PayLock
14 system?

15 A The first time I heard that Mr. Airday had
16 any opinion regarding PayLock was when I
17 received the first complaint that you had
18 served on me.

19 Q Well, you knew Mr. Airday was a member of
20 the Marshals Association, right?

21 A I knew he was a marshal. I didn't know
22 specifically if he was a member of the
23 association.

24 Q So did you ever discuss with Mr. Kelly
25 Mr. Airday's opinions about the PayLock

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2 MR. SMITH: I've marked as Exhibit 2 a
3 rather lengthy document, Bates stamp GA461
4 through 530. It's entitled, "Agreement By and
5 Between the City of New York and IPT, LLC."

6 BY MR. SMITH:

7 Q Can you just tell me whether or not this
8 is the PayLock contract that we were
9 testifying -- or you were testifying about
10 previously?

11 A (Witness views document.)

12 As far as I know, this is the contract
13 between -- just based on looking at it, the
14 contract between the City and the company that
15 operated the PayLock system.

16 Q As the director of the Marshals Bureau,
17 did you have a role in the negotiation of this
18 contract?

19 A No.

20 Q Did you approve the contract?

21 A No.

22 Q I have put a little sticky here on the
23 signature page on Page 20 of the contract.
24 There are two names.

25 That's the name of the DOI Assistant

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2 has ended.

3 Q Am I correct that Marshal Airday's badge
4 number was reassigned?

5 MR. SEACORD: Objection.

6 A That is correct.

7 Q And am I correct that as of this time
8 under the law there could be as many as 83
9 badges or offices of City marshals?

10 A Yes.

11 Q And so why did you give somebody else
12 Marshal Airday's Badge No. 7, as opposed to
13 giving that person one of the available badge
14 numbers?

15 A My recommendation was that
16 Marshal Airday's successor be appointed to the
17 office that he held, which in effect would
18 replace Marshal Airday as a City marshal in
19 accordance with the New York City Civil Court
20 Act that expressly authorizes that.

21 Q Have you ever issued a similar kind of
22 letter to another marshal, who either had his
23 term or her term ending or had been hold over?

24 A What do you mean by a similar kind of
25 letter?

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2 Q A letter saying your term has ended,
3 you're not being held over, you're no longer
4 needed as a marshal?

5 A That's not what this letter says. This
6 letter says that a successor was appointed to
7 the office that Marshal Airday held until his
8 term expired.

9 Q Okay.

10 Have you ever sent to another marshal a
11 letter stating that other than this letter?

12 A No.

13 Q When you say that it was your
14 recommendation action, what do you mean by
15 that?

16 A It was my recommendation that a successor
17 be appointed to the office that Marshal held
18 prior to the expiration of his term.

19 Q And who did you make this recommendation
20 to?

21 A I made that recommendation to staff
22 members of the mayor.

23 Q Anybody else?

24 A No.

25 Q Who were the staff members?

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A The person I made the direct
recommendation to, his name was John Baxter.

Q And who is John Baxter?

A John Baxter was a staff member in the
office of the mayor who was a principal point
of contact for me and members of my staff
regarding the appointment of marshals and the
actual steps that needed to be taken to effect
appointments.

Q He was the one who was going to get the
mayor's signature on the appointment letter?

MR. SEACORD: Objection.

Go ahead.

A Whether he personally was that person, I
don't know, but he was my point of contact with
regard to letters of appointment.

Q Did you send a copy of this letter, the
December 23rd letter to Marshal Airday, to
anybody?

A I don't recall.

Q Was it your practice to record CCs or BCCs
at the time?

A If I was sending a copy contemporaneously,
yes.

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2 Q How was this letter sent to Marshal
3 Airday?

4 A I remember it was hand delivered to his
5 office. It may also have been mailed. It
6 probably was.

7 Q Did you obtain anybody's approval before
8 sending this letter?

9 A No.

10 Q Did you have any discussions with
11 Mr. Baxter about this letter before sending it?

12 A No.

13 Q Why did you send this letter to Marshal
14 Airday?

15 A To inform him that a successor had been
16 appointed to his term -- excuse me, to the
17 office that he previously held, and that his
18 service as a marshal had ended, and that,
19 accordingly, he needed to surrender his badge
20 and identification card, and to ask him to
21 contact our office for additional information
22 regarding the wind-down procedure or
23 termination of office procedure.

24 Q And why did you make this recommendation
25 or decision to have a successor appointed for

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2 his office?

3 A Well, first of all, that was a -- the
4 appointment of a successor was expressly
5 authorized by the law.

6 My reasons for recommending that that be
7 done had to do with Marshal Airday's conduct
8 and judgment that was exposed in the aftermath
9 of his two arrests in December 2011 and
10 January 2012.

11 Q And what was that conduct that led you to
12 make this recommendation?

13 A It involved several elements. One, the
14 marshal was in possession unlawfully of two
15 firearms. Two, that fact became known after
16 the marshal was arrested on a domestic violence
17 charge, and was under an obligation to
18 surrender all of his firearms.

19 The fact that he was arrested within four
20 weeks of the domestic violence arrest with
21 facts that indicated that he had not
22 surrendered all his firearms as directed by the
23 court, and that he had been in possession for
24 some period of time before his domestic
violence arrest of an unregistered firearm were

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2 the principal acts that caused me to make the
3 recommendation.

4 Those acts, in turn, to me reflected
5 judgment that fell far short of the standard
6 that I believe was warranted for someone who
7 is, Number 1, mayoral appointee; and Number 2,
8 holding the position that involves the
9 scrupulous attention to rules, court orders,
10 and adherence to the law in situations that
11 involve actions that -- the position involves
12 actions taken against members of the public.

13 So the position involves a mayoral
14 appointment, a delegation of very serious
15 authority to take away people's property, to
16 remove people's vehicles, to remove people from
17 their homes, to remove money from people's bank
18 accounts. Those are very serious
19 responsibilities that call for uncompromised
20 integrity, mature judgment, adherence,
21 scrupulous adherence to rules, laws and court
22 orders and basic seriousness in how the person
23 goes about conducting their affairs, both
24 personal and official.

25 The conduct that I described and the fact

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2 that the marshal having been arrested once
3 failed to do the things that were required of
4 him to stay well clear of being arrested again,
5 and that he had not done those things and that,
6 in fact, done the opposite, said to me that we
7 need to replace Marshal Airday.

8 Q Are there any other reasons for why you
9 made the recommendation to replace Marshal
10 Airday?

11 A No.

12 Q You mentioned that Marshal Airday was
13 arrested for a domestic violence incident; is
14 that correct?

15 A Correct.

16 Q When did you first learn about
17 Marshal Airday's arrest for a domestic violence
18 incident?

19 A I believe it was shortly after the arrest.

20 Q How were you informed?

21 A That may have been the one that
22 Ken Litwack called me about. We are
23 notified -- my office is notified when marshals
24 are arrested through several mechanisms. So I
25 believe I had more than one report regarding

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2 the marshal's arrest, and I believe that was
3 the one that Ken Kelly called me about.

4 Excuse me. Not Ken Kelly. Ken Litwack.

5 Q Ken Litwack.

6 You believe Ken Litwack called you up
7 about the domestic violence arrest?

8 A I believe so.

9 Q And you also were notified by the New York
10 State Criminal Justice Department, weren't you?

11 A Correct.

12 Q That's an automatic system that lets you
13 know that?

14 A Yes.

15 Q And you had been notified of other
16 marshals being arrested through that same
17 system, hadn't you?

18 A From time to time.

19 Q Who?

20 A I can't remember specific means of
21 notification. If your question goes to --

22 Q Well, my question is: Who else do you
23 remember getting notified, one way or the
24 other, that they were arrested who was a City
25 marshal who was under your supervision?

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2 resigns, we would be compelled -- was the word
3 I used -- to seek his suspension at the
4 Appellate Division.

5 So this letter in effect is a placeholder
6 that tells him, "You should resign. If you
7 don't, we're going to proceed to obtain your
8 suspension." It may have also mentioned
9 removal. I see that it does.

10 So I was telling the marshal that if he
11 did not resign, that's how we would proceed.
12 And in the meantime I'm giving him a temporary
13 order to stop official acts other than those
14 mentioned in the letter.

15 So he could continue to collect money. He
16 could continue to release vehicles. He could
17 continue to perform the functions that involved
18 accounting for the money and remitting it as
19 part of his responsibilities.

20 What he could not do was to go out and tow
21 additional vehicles for the City of New York
22 while this matter was in this particular
23 status.

24 Q Before telling Marshal Airday that he
25 could no longer temporarily, based on your

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2 Airday to resign, and that he should cease
3 acting as a marshal, right?

4 A No.

5 MR. SEACORD: Objection.

6 Q How is that incorrect?

7 A You said that my instruction to the
8 marshal -- in your question you said that that
9 was based on some allegations in a police
10 report, suggesting in the way you phrased the
11 question that that was the sum total of the
12 information at my disposal, and I mentioned a
13 number of other steps that we took at about
14 this time.

15 Q What other information did you have?

16 MR. SEACORD: Don't cut him off.

17 Q Sorry.

18 What other information did you have other
19 than the documents that you obtained from the
20 police?

21 MR. SEACORD: Well, that's different than
22 what you said.

23 Q Okay.

24 Well, what else did you have? I mean --
25 what else did you have?

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2 MR. SEACORD: Objection.

3 You can repeat.

4 A We had the records of the guns that were
5 recovered from Marshal Airday's premises on two
6 occasions, which came from the police. My
7 recollection is that there were conversations
8 between detectives or investigators at DOI and
9 detectives, police officers at the police
10 department.

11 We also had records at DOI that in effect
12 listed all the guns that we knew about that
13 Marshal Airday had. I also at some point had a
14 discussion with Ken Litwack, who made certain
15 representations about what had occurred.

16 I don't recall if anyone else called me on
17 Marshal's behalf, but I do recall speaking with
18 Ken who, I believe, was speaking for the
19 marshal. So we had more facts than just a mere
20 allegation and a police report.

21 Q But based on those things, you sent this
22 letter, right?

23 A Correct.

24 Q All --

25 A All the things I mentioned.

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2 MR. SEACORD: Objection.

3 You can answer.

4 A My understanding is that while the case
5 was pending at OATH during a calendar call
6 there was a conference, and that involved
7 Marshal Airday's attorneys, the attorneys for
8 DOI.

9 The outcome of that conference was that
10 Marshal Airday consented to an open-ended
11 period of suspension pending the resolution of
12 what was then two criminal cases that were
13 pending against him, and that the disciplinary
14 proceeding was adjourned in the interim.

15 Q So the administrative disciplinary process
16 was put on hold pending the criminal charges,
17 right?

18 A Correct.

19 Q I'm going to show you what I'm going to
20 mark as Exhibit 10, two e-mails from
21 Dylan Gordon to you, Bates number 476 to 480.

22 MR. SEACORD: You're marking them both as
23 10?

24 MR. SMITH: Yes.

25 (Whereupon, the aforementioned document

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2 memorandum, no.

3 Q When you say "not specifically," did you
4 inform them indirectly?

5 A There had been a period of time in which
6 Mr. London's law firm was representing
7 Marshal Airday. During that period of time, I
8 told Mr. London, in sum and substance, that
9 when the marshal's term expired, he certainly
10 wasn't going to be reappointed.

11 Whether I specifically said that he would
12 definitely be replaced, I don't recall. But
13 that eventuality, I think, was covered as a
14 possibility, and certainly my intention that
15 Marshal Airday would not be reappointed. I
16 know I told Mr. London at various times.

17 Q When did you tell Mr. London that for the
18 first time?

19 A It was probably early on.

20 Q I don't know what that means.

21 A Well, he began representing Marshal Airday
22 at some point in or around February, January,
23 February 2012. We had a number of
24 conversations. We exchanged a number of items
25 of correspondence. I was speaking with him

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2 several times during that period of time.

3 Q Did you ever tell London or anybody else
4 associated with Mr. Airday, after the criminal
5 charges had been dismissed, that Marshal Airday
6 was not going to be reappointed or held over?

7 A I don't recall saying that specifically.
8 I think in the negotiation of the stipulation
9 it was referred to. I'm not -- I don't recall
10 exactly what was said, but the fact that he
11 would not be reappointed I am pretty sure, was
12 conveyed in substance.

13 Q Are you saying that the fact that
14 Marshal Airday was not going to be reappointed
15 was conveyed in substance while there was a
16 negotiation over the stipulation, which is
17 attached as Exhibit 11?

18 A That's my recollection and interpretation.

19 Q And is there something in the stipulation
20 that reflects the fact that Marshal Airday was
21 not going to be reappointed or held over?

22 A Not directly and expressly.

23 Q What about indirectly; is there anything
24 in this stipulation that suggests that?

25 A There is a statement that the stipulation

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2 would be considered -- will be considered for
3 all purposes as part of Marshal Airday's
4 official record.

5 Q Anything else?

6 A No.

7 Q Who was involved in drafting the
8 stipulation?

9 A I was, and our counsel's office.

10 Q And who was that?

11 A The person I remember most specifically
12 was Benet Kearney.

13 Q Benet Kearney is a lawyer in your office?

14 A At that time, she was at the Division of
15 Investigation General Counsel's Office.

16 Q What about Marjorie Landa; did she have
17 any role in drafting the stipulation?

18 A I'm sure that she reviewed it at some
19 point. Drafting, I don't think so.

20 Q All right.

21 The stipulation reflects that there was
22 one pending charge against Airday, right, for
23 not cooperating in the DOI investigation,
24 right?

25 A Yes.

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Q Did you tell him he was no longer going to be a marshal?

A I told him he was no longer a marshal.

Q Was he surprised?

A Yes.

Q Were you surprised that he was surprised?

A No.

Q Do you think he had a reasonable expectation that his office as a City Marshal was going to continue, given the fact that he had been either reappointed or held over since 1984?

A His office did continue. What didn't continue was his occupancy of it.

Q Do you think that he had a reasonable expectation as of December 2013 that he was going to continue in that office, given the fact that he had been in that position or that office since 1984, and had been held over or reappointed consecutively for those 30 years?

MR. SEACORD: Objection.

Go ahead.

A No.

Q Why not?

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2 A Because the law is very clear that upon
3 the expiration of a marshal's term, his
4 successor shall be appointed, and that upon
5 expiration of the term, the marshal's office is
6 considered vacant for purposes of choosing his
7 successor.

8 To me, that should put anyone who
9 understands anything about the business of
10 being a marshal on notice that what you get is
11 a five-year term. At the end of that five-year
12 term, the presumption is you are going to be
13 replaced.

14 In light of Marshal Airday's conduct and
15 the lack of judgment that was exposed by his
16 two arrests and the facts that were developed
17 as a result of them, Marshal Airday should have
18 been well aware that his future as a marshal
19 was in grave jeopardy.

20 Q How many days after you sent
21 Marshal Airday your December 23, 2013 letter
22 did you remain as the Director of the Marshal's
23 Bureau?

24 A How many days?

25 Q Yes. How many days?

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2 (Whereupon, a short recess was taken.)

3 MR. SMITH: I don't have any more
4 questions at this time.

5 MR. SEACORD: We just request an
6 opportunity to review the transcript and make
7 any necessary corrections.

8 MR. SMITH: Okay.

9 (Whereupon, at 5:26 p.m., the Examination
10 of this Witness was concluded.)

11
12
13 _____
14 KEITH SCHWAM

15 Subscribed and sworn to before me
16 this ____ day of _____, 2017.

17
18 _____
19 NOTARY PUBLIC
20
21
22
23
24
25

EXHIBIT C

2017-08-08
LE. M. Jordan

Condensed Transcript

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
GEORGE AIRDAY,

Plaintiff,

-against-

THE CITY OF NEW YORK, KEITH SCHWAM and
DAVID M. FRANKEL,

Defendants.
-----X

80 Broad Street
New York, New York

August 8, 2017
11:00 a.m.

DEPOSITION of LOUIS JORDAN, a witness on
behalf of THE CITY OF NEW YORK, one of the
Defendants herein, held at the above time and
place, taken before Karen Zammit, a Shorthand
Reporter and Notary Public of the State of New
York, pursuant to Rule 26 et seq. of the Federal
Rules of Civil Procedure and stipulations between
Counsel.

Job #26496

* * *

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1	Page 2	1	Page 3
2	APPEARANCES:	2	STIPULATIONS
3	LAW OFFICES OF NATHANIEL B. SMITH, ESQ.	3	IT IS HEREBY STIPULATED AND AGREED, by and
4	Attorneys for Plaintiff	4	among counsel for the respective parties hereto,
5	80 Broad Street	5	that the filing, sealing and certification of the
6	New York, New York 10004	6	within deposition shall be and the same are
7	BY: NATHANIEL B. SMITH, ESQ.	7	hereby waived;
8	Nathsmith@gmail.com	8	IT IS FURTHER STIPULATED AND AGREED that all
9	212-227-7062	9	objections, except as to form of the question,
10	NEW YORK CITY LAW DEPARTMENT	10	shall be reserved to the time of the trial;
11	Attorney for Defendants	11	IT IS FURTHER STIPULATED AND AGREED that the
12	100 Church Street	12	within deposition may be signed before any Notary
13	New York, New York 10007	13	Public with the same force and effect as if
14	BY: MICHAEL NACCHIO, ESQ.	14	signed and sworn to before the Court.
15	Mnacchio@law.nyc.gov	15	IT IS FURTHER STIPULATED AND AGREED that
16	212-356-0839	16	counsel shall furnish counsel for the witness
17	ALSO PRESENT:	17	with a copy of the within deposition without
18	George Airday	18	charge.
19		19	* * *
20		20	
21		21	
22		22	
23		23	
24		24	
25		25	
	Page 4		Page 5
1	LOUIS JORDAN, the witness herein,	1	L. Jordan
2	having first been duly sworn by the Notary	2	me know?
3	Public, was examined and testified as follows:	3	A Yes, sir.
4	EXAMINATION BY	4	Q You understand that everything that
5	MR. SMITH:	5	you say and everything that I say gets out taken
6	Q What is your name?	6	down word for word?
7	A Louis Jordan.	7	A Yes.
8	Q What is your business address?	8	Q It is very important that you
9	A 210 Joralemon Street, Brooklyn, New	9	understand my questions so you will let me know
10	York 11201.	10	if I am not being very clear?
11	Q Good morning, Mr. Jordan.	11	A Yes.
12	A Good morning.	12	Q What did you do to prepare for
13	Q Have you ever been deposed before?	13	today's deposition?
14	A No, sir.	14	A There was really nothing to prepare
15	Q There are some basic ground rules	15	for.
16	that your counsel may have gone through with you.	16	Q Did you review any documents?
17	I just want to go through them with you again.	17	A I have looked over stuff pertaining
18	You understand you are under oath?	18	to that that I could locate, yes.
19	A Yes, sir.	19	Q Could you tell me a little more
20	Q Do you understand it is very	20	about the materials that you have looked at to
21	important that you understand my questions?	21	prepare for the deposition or just to refresh
22	A Yes, sir.	22	your recollection?
23	Q Would you agree that if I ask you a	23	A Yes, I looked over a memo, memos
24	question and you don't understand it you will let	24	that were sent, and conversations with DIO and
25		25	with recommendations to my former sheriff.

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Page 10

1 **L. Jordan**
2 Q Can you show me which documents in
3 this set of Plaintiff's Exhibit 21 relate to
4 recommendations to the former sheriff?
5 **A 946.**
6 Q Anything else?
7 **A I believe that's it as far as the**
8 **documents that are here.**
9 Q Am I correct that the first two
10 pages of this document, 945 and 946, these are a
11 string of E-mails that you obtained about six
12 months ago from your E-mails?
13 **A No, that's not correct.**
14 Q How did you get these two pages?
15 **A Because I had saved them. I have a**
16 **folder on these in my computer. These were**
17 **documents that go back to February of 2012, also**
18 **February 9, 2012.**
19 Q When you obtained these documents
20 you obtained them from a folder?
21 **A No, these were E-mails that were**
22 **sent to me. They were saved E-mails to a file.**
23 Q They were saved E-mails to what
24 file?
25 **A A file that I keep.**

Page 12

1 **L. Jordan**
2 Q You maintain files on all marshals
3 in the program?
4 **A Yes.**
5 Q You had a file on Marshal Airday?
6 **A Yes.**
7 **MR. SMITH: I will call for the**
8 **production of the file that the witness has**
9 **just identified.**
10 **MR. NACCHIO: Please follow up in**
11 **writing.**
12 **MR. SMITH: Off the record.**
13 **[Whereupon, a discussion was held**
14 **off the record.]**
15 Q Where are you currently working?
16 **A Department of Finance.**
17 Q What is your title?
18 **A Director of our marshal program,**
19 **back office staff.**
20 Q How long have you been in that
21 position?
22 **A I have been in this position for**
23 **close to 28 years, close to that.**
24 **MR. SMITH: Off the record I**
25 **mentioned that rather than ask you for your**

Page 11

1 **L. Jordan**
2 Q What is that called?
3 **A In this case it would probably be a**
4 **file on Marshal Airday.**
5 Q What else is in that file?
6 **MR. NACCHIO: Objection to form.**
7 You can answer it.
8 **A I can't answer that, I don't know.**
9 Q Do you have any idea what other
10 documents were in that file?
11 **A That would be relating to Marshal**
12 **Airday's activity.**
13 Q Can you give me a sense of the
14 number of documents in that file?
15 **A No.**
16 Q Is that because it is too many to
17 remember?
18 **A No, it is just that I don't**
19 **remember what can be in there because each**
20 **marshal has a file. It can vary from anything.**
21 **It could be a complaint, anything, I don't know.**
22 Q In your role as the director of the
23 scofflaw program at the Department of Finance you
24 maintain a file on Marshal Airday?
25 **A No, on all marshals in the program.**

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1 **L. Jordan**
2 home address in case I need to serve any
3 process I wanted counsel to agree that he
4 would or the Law Department would accept
5 service of any trial subpoenas in the event
6 that I need to call you as a witness at
7 trial.
8 Is that acceptable, counsel, that
9 you will accept service of any process on
10 behalf of Mr. Jordan so I don't have to ask
11 for his home address?
12 **MR. NACCHIO: We will accept**
13 **service. If he is no longer employed and**
14 **is retired or has otherwise left service we**
15 **will make efforts to reach him and only if**
16 **we can't reach him or he doesn't cooperate**
17 **will we provide you with his address at**
18 **that time.**
19 **MR. SMITH: Thank you very much.**
20 Q Are you planning on retiring soon?
21 **A I have an 11-year-old and a**
22 **14-year-old.**
23 Q So the answer is no?
24 **A Right.**
25 Q What is your highest level of

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Louis Jordan

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<p>1 L. Jordan</p> <p>2 education?</p> <p>3 A College.</p> <p>4 Q When and where?</p> <p>5 A I went to the Borough of Manhattan</p> <p>6 in 1986.</p> <p>7 Q Did you receive a degree?</p> <p>8 A Yes, business administration.</p> <p>9 Q After graduating you joined the</p> <p>10 Department of Finance?</p> <p>11 A Yes. It was actually the</p> <p>12 Department of Transportation at that time,</p> <p>13 Parking Violations Bureau.</p> <p>14 Q How long were you with the Parking</p> <p>15 Violations Bureau?</p> <p>16 A Under former Mayor Guliani they</p> <p>17 merged the Parking Violations Bureau into</p> <p>18 financing. That was somewhere around 1994, I</p> <p>19 believe.</p> <p>20 Q Before you were given the title of</p> <p>21 director what was your position at DOT or DOF?</p> <p>22 A Deputy director.</p> <p>23 Q As the director of what?</p> <p>24 A The marshals program.</p> <p>25 Q Could you describe your duties?</p>	<p>1 L. Jordan</p> <p>2 A Basically it is really about</p> <p>3 revenue. At that time it was the towing program.</p> <p>4 The Department of Transportation with the Parking</p> <p>5 Violations Bureau, which is now the Department of</p> <p>6 Finance, we define ways to collect outstanding</p> <p>7 judgment debt that is owed to the City. They</p> <p>8 came up with a towing program.</p> <p>9 Part of it I did was help put the</p> <p>10 towing program together with Elizabeth</p> <p>11 Brickfield, the former director at that time, so</p> <p>12 it is a revenue generating program, and I have a</p> <p>13 staff, and we mainly report and monitor</p> <p>14 Inventory, we monitor marshals in the field, how</p> <p>15 much revenue comes in, how many vehicles are</p> <p>16 towed, what the trends are, what the targets are.</p> <p>17 We supervise the marshals in that sense.</p> <p>18 Q How many marshals are in the towing</p> <p>19 program?</p> <p>20 A There are currently 12. It is</p> <p>21 booting now.</p> <p>22 Q No towing, just booting?</p> <p>23 A It is both. When Marshal Airday</p> <p>24 was in the program it was just towing. Now it is</p> <p>25 booting and possibly towing.</p>
Page 16	Page 17
<p>1 L. Jordan</p> <p>2 Q For how long have there been 12</p> <p>3 marshals in the program?</p> <p>4 A I think about a year and-a-half in</p> <p>5 2013 when the marshal expired, deceased.</p> <p>6 Q Who was that?</p> <p>7 A Marshal Edward Guida.</p> <p>8 Q When did he pass away?</p> <p>9 A About two years ago.</p> <p>10 Q Am I correct that in 2015 there</p> <p>11 were about 13 marshals in the towing program?</p> <p>12 A Yes, before Guida was deceased.</p> <p>13 Q For how long were there 13 marshals</p> <p>14 in the towing program?</p> <p>15 A I don't remember. Numbers changed.</p> <p>16 We had started out with two and went to 20 over</p> <p>17 the years. As the marshals became more efficient</p> <p>18 in what they were doing less and less were</p> <p>19 needed. I can't answer exactly the numbers.</p> <p>20 Q The incidents that relate to this</p> <p>21 case occurred starting in around 2010 or 2011 or</p> <p>22 2012 or 2013. Are you familiar generally with</p> <p>23 the nature of the claims in this case?</p> <p>24 A Against Marshal Airday?</p> <p>25 Q Marshal Airday has brought claims</p>	<p>1 L. Jordan</p> <p>2 against various parties because he feels that he</p> <p>3 was not treated properly in his removal as a</p> <p>4 marshal --</p> <p>5 A No, I am not familiar with that.</p> <p>6 Q You have never read any of the</p> <p>7 legal documents in this case, is that fair to</p> <p>8 say?</p> <p>9 A As far as --</p> <p>10 MR. NACCHIO: Objection to form.</p> <p>11 You can answer it.</p> <p>12 MR. SMITH: He is just telling me</p> <p>13 that my question is poorly phrased. I'll</p> <p>14 rephrase it.</p> <p>15 Q Have you ever read George Airday's</p> <p>16 Complaint?</p> <p>17 A I don't believe so.</p> <p>18 Q Have you ever read his Amended</p> <p>19 Complaint?</p> <p>20 A No.</p> <p>21 Q By way of background, Mr. Airday</p> <p>22 alleges that in 2010, 2011, 2012 and 2013 certain</p> <p>23 individuals at DOF and DIO denied him certain</p> <p>24 rights and as a result of being denied those</p> <p>25 rights he lost income and lost his right to</p>

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1 L. Jordan
2 and a computer.
3 The marshal comes upon a vehicle
4 that is a hit, which is a scofflaw, he gets out
5 of the vehicle and check the dashboard for the
6 proper VIN number. If it is a New York plate you
7 match the sticker. If it is out of state you
8 have to give us the correct VIN number. There is
9 a booter inside the van. He gets out and places
10 the boot on the vehicle.
11 Q The marshals have to be present at
12 the time of the booting?
13 A Yes.
14 Q Has that been the system in place
15 since the booting program began in 2013?
16 A No.
17 Q When did it change?
18 A It didn't change. That system has
19 been in place since the inception of the program.
20 Q Since the inception of the towing
21 program?
22 A Both programs. A marshal must be
23 at the scene and levy on that vehicle.
24 Q Is the PayLock contract going to be
25 renewed?

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1 L. Jordan
2 I was just referring to.
3 A Okay.
4 MR. NACCHIO: Off the record.
5 [Whereupon, a discussion was held
6 off the record.]
7 A Yes, I am familiar with this
8 contract, an RFP, I think I have seen this
9 before.
10 Q Was there an RFP?
11 A I didn't mean to say that. There
12 was a contract of some sort and that looks like
13 that is what it was.
14 Q Were you familiar with the
15 negotiations with PayLock back in 2012 when there
16 were discussions about it coming on board?
17 A Not really. When we had Frankel,
18 everything was closed door.
19 Q Frankel was the one who was doing
20 the negotiating?
21 A Yes, it would have fell under
22 Commissioner Frankel.
23 Q What do you mean by that?
24 A Things were done a lot differently.
25 I was not a part of it.

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1 L. Jordan
2 A I couldn't answer that.
3 Q Are you aware of any discussions
4 within the Department of Finance about its
5 renewal?
6 A No, I have not been a part of any
7 discussions.
8 Q My understanding is that the
9 contract was entered into formally in 2012 and it
10 had a five-year term and it was scheduled to
11 expire this year. Do you have any knowledge
12 about that at all?
13 A I know they are scheduled to
14 expire, but that's not handled on my level.
15 That's above me.
16 Q Getting back to the preparation for
17 your deposition, other than looking at the file
18 that you have maintained at your office did you
19 do any searching for any E-mail communications of
20 any kind?
21 A Absolutely not.
22 Q I will show you what was previously
23 marked as Plaintiff's Exhibit 2. I will
24 represent to you that it has been previously
25 identified as the PayLock contract, the one that

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1 L. Jordan
2 Q If you were on the outside of the
3 closed door who was on the inside?
4 A I can't tell you that. It would
5 probably be some of his cabinet that was on the
6 inside who actually negotiated that.
7 Q Was Andrew Salin involved?
8 A Yes, he is one of the deputy
9 Commissioners. I think he is the one that,
10 quarterback, I will use that term.
11 Q Do you know whether or not other
12 potential booting companies were investigated?
13 MR. NACCHIO: Objection to form.
14 A No, I don't know.
15 Q As far as you know sitting here
16 today were there any other booting companies
17 involved?
18 MR. NACCHIO: Objection.
19 A I don't know.
20 Q Is it fair to say that the only
21 booting company that you ever heard of as
22 potentially having a role in the scofflaws
23 program at DOF was PayLock?
24 MR. NACCHIO: Objection.
25 A That's the only program that I know

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<p>1 L. Jordan</p> <p>2 off by key, where this one you are given a code</p> <p>3 and you can punch in the code and take the boot</p> <p>4 off and return the boot to the location.</p> <p>5 Q Did you have any other objections</p> <p>6 or concerns about the booting program back in</p> <p>7 2011, 2012?</p> <p>8 A No. That was one.</p> <p>9 Q Do you remember any other</p> <p>10 objections or concerns that you had?</p> <p>11 A No.</p> <p>12 Q I will show you what was previously</p> <p>13 marked as Plaintiff's Exhibit 20. This is a</p> <p>14 memorandum by Keith Schwam. I will show it to</p> <p>15 your counsel as well. Have you had a chance to</p> <p>16 review Exhibit 20?</p> <p>17 A I scanned it.</p> <p>18 Q Keith Schwam is the author of this</p> <p>19 memorandum. Who was Keith Schwam?</p> <p>20 A He was the director of the</p> <p>21 Marshal's Bureau.</p> <p>22 Q Is it fair to say that both you and</p> <p>23 he had some sort of oversight over the same</p> <p>24 marshals who were in the towing program?</p> <p>25 A Two different types of oversight.</p>	<p>1 L. Jordan</p> <p>2 DIO oversees the marshals. I was basically</p> <p>3 supervising the program that utilizes marshal</p> <p>4 services.</p> <p>5 Q Did you work regularly with Keith</p> <p>6 Schwam with regard to the marshals that were in</p> <p>7 the program?</p> <p>8 A I had to, yes.</p> <p>9 Q Is there anything in this memo that</p> <p>10 you noticed was in correct?</p> <p>11 A No, I can't say that with</p> <p>12 certainty.</p> <p>13 Q There is a reference on the first</p> <p>14 page in the second paragraph from the bottom.</p> <p>15 Please read that sentence to yourself.</p> <p>16 A Okay (complying).</p> <p>17 Q The next sentence which says,</p> <p>18 "Marshal Airday's towing activity ended on</p> <p>19 January 18, 2012 and never resumed," do you see</p> <p>20 that?</p> <p>21 A Yes.</p> <p>22 Q Is that a correct statement?</p> <p>23 MR. NACCHIO: Objection to form.</p> <p>24 A I can't speak to why he put that,</p> <p>25 never resumed, unless he was speaking up to that</p>
Page 40	Page 41
<p>1 L. Jordan</p> <p>2 date.</p> <p>3 Q Am I correct that Marshal Airday's</p> <p>4 towing activity for the Department of Finance</p> <p>5 ended on January 18, 2012?</p> <p>6 A No, you are correct. Because I was</p> <p>7 not notified by the marshal, DOF -- I was not</p> <p>8 notified until February 7th when I was seeking</p> <p>9 inventory.</p> <p>10 Q You didn't find out what?</p> <p>11 A That the marshal been arrested for</p> <p>12 anything or suspended from DIO. I didn't find</p> <p>13 out until we were seeking inventory and I was</p> <p>14 told by staff that we have not received nothing</p> <p>15 from Marshal Airday in quite a while. After</p> <p>16 that, around February 7, 2012, is when I found</p> <p>17 out.</p> <p>18 Q February 7, 2012 you found out that</p> <p>19 Marshal Airday was no longer towing for the</p> <p>20 Department of Finance?</p> <p>21 A That he had not been towing. We</p> <p>22 had not told him anything, we didn't know.</p> <p>23 Q On February 7, 2012 you learned</p> <p>24 what from whom?</p> <p>25 A From Marshal Airday that he had not</p>	<p>1 L. Jordan</p> <p>2 been towing.</p> <p>3 Q Marshal Airday himself told you</p> <p>4 that?</p> <p>5 A Yes.</p> <p>6 Q On February 7, 2012?</p> <p>7 A Yes, somewhere around there.</p> <p>8 Q I will show you what was previously</p> <p>9 marked as Plaintiff's Exhibit 4. This is a</p> <p>10 letter from Keith Schwam to Marshal Airday.</p> <p>11 Please take a look at that.</p> <p>12 A Okay (complying).</p> <p>13 Q Have you had a chance to review</p> <p>14 Plaintiff's Exhibit 4?</p> <p>15 A Yes.</p> <p>16 Q Have you ever seen this document</p> <p>17 before?</p> <p>18 A Not then.</p> <p>19 Q Before me showing you this document</p> <p>20 have you ever seen this before?</p> <p>21 A Yes, I may have.</p> <p>22 Q Do you know when?</p> <p>23 A No, I don't know.</p> <p>24 Q It looks familiar?</p> <p>25 A It sounds familiar. I think it</p>

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<p>1 L. Jordan</p> <p>2 off by key, where this one you are given a code</p> <p>3 and you can punch in the code and take the boot</p> <p>4 off and return the boot to the location.</p> <p>5 Q Did you have any other objections</p> <p>6 or concerns about the booting program back in</p> <p>7 2011, 2012?</p> <p>8 A No. That was one.</p> <p>9 Q Do you remember any other</p> <p>10 objections or concerns that you had?</p> <p>11 A No.</p> <p>12 Q I will show you what was previously</p> <p>13 marked as Plaintiff's Exhibit 20. This is a</p> <p>14 memorandum by Keith Schwam. I will show it to</p> <p>15 your counsel as well. Have you had a chance to</p> <p>16 review Exhibit 20?</p> <p>17 A I scanned it.</p> <p>18 Q Keith Schwam is the author of this</p> <p>19 memorandum. Who was Keith Schwam?</p> <p>20 A He was the director of the</p> <p>21 Marshal's Bureau.</p> <p>22 Q Is it fair to say that both you and</p> <p>23 he had some sort of oversight over the same</p> <p>24 marshals who were in the towing program?</p> <p>25 A Two different types of oversight.</p>	<p>1 L. Jordan</p> <p>2 DIO oversees the marshals. I was basically</p> <p>3 supervising the program that utilizes marshal</p> <p>4 services.</p> <p>5 Q Did you work regularly with Keith</p> <p>6 Schwam with regard to the marshals that were in</p> <p>7 the program?</p> <p>8 A I had to, yes.</p> <p>9 Q Is there anything in this memo that</p> <p>10 you noticed was in correct?</p> <p>11 A No, I can't say that with</p> <p>12 certainty.</p> <p>13 Q There is a reference on the first</p> <p>14 page in the second paragraph from the bottom.</p> <p>15 Please read that sentence to yourself.</p> <p>16 A Okay (complying).</p> <p>17 Q The next sentence which says,</p> <p>18 "Marshal Airday's towing activity ended on</p> <p>19 January 18, 2012 and never resumed," do you see</p> <p>20 that?</p> <p>21 A Yes.</p> <p>22 Q Is that a correct statement?</p> <p>23 MR. NACCHIO: Objection to form.</p> <p>24 A I can't speak to why he put that,</p> <p>25 never resumed, unless he was speaking up to that</p>
Page 40	Page 41
<p>1 L. Jordan</p> <p>2 date.</p> <p>3 Q Am I correct that Marshal Airday's</p> <p>4 towing activity for the Department of Finance</p> <p>5 ended on January 18, 2012?</p> <p>6 A No, you are correct. Because I was</p> <p>7 not notified by the marshal, DOF -- I was not</p> <p>8 notified until February 7th when I was seeking</p> <p>9 inventory.</p> <p>10 Q You didn't find out what?</p> <p>11 A That the marshal been arrested for</p> <p>12 anything or suspended from DIO. I didn't find</p> <p>13 out until we were seeking inventory and I was</p> <p>14 told by staff that we have not received nothing</p> <p>15 from Marshal Airday in quite a while. After</p> <p>16 that, around February 7, 2012, is when I found</p> <p>17 out.</p> <p>18 Q February 7, 2012 you found out that</p> <p>19 Marshal Airday was no longer towing for the</p> <p>20 Department of Finance?</p> <p>21 A That he had not been towing. We</p> <p>22 had not told him anything, we didn't know.</p> <p>23 Q On February 7, 2012 you learned</p> <p>24 what from whom?</p> <p>25 A From Marshal Airday that he had not</p>	<p>1 L. Jordan</p> <p>2 been towing.</p> <p>3 Q Marshal Airday himself told you</p> <p>4 that?</p> <p>5 A Yes.</p> <p>6 Q On February 7, 2012?</p> <p>7 A Yes, somewhere around there.</p> <p>8 Q I will show you what was previously</p> <p>9 marked as Plaintiff's Exhibit 4. This is a</p> <p>10 letter from Keith Schwam to Marshal Airday.</p> <p>11 Please take a look at that.</p> <p>12 A Okay (complying).</p> <p>13 Q Have you had a chance to review</p> <p>14 Plaintiff's Exhibit 4?</p> <p>15 A Yes.</p> <p>16 Q Have you ever seen this document</p> <p>17 before?</p> <p>18 A Not then.</p> <p>19 Q Before me showing you this document</p> <p>20 have you ever seen this before?</p> <p>21 A Yes, I may have.</p> <p>22 Q Do you know when?</p> <p>23 A No, I don't know.</p> <p>24 Q It looks familiar?</p> <p>25 A It sounds familiar. I think it</p>

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Page 42	Page 43
<p>1 L. Jordan</p> <p>2 might have been part of something that Keith</p> <p>3 Schwam sent me as well that I thought was here,</p> <p>4 but I am not sure.</p> <p>5 Q You think maybe Keith Schwam sent</p> <p>6 you this letter?</p> <p>7 A No, I don't recall seeing this</p> <p>8 letter. I see it is copied to Kenneth Litwack.</p> <p>9 Q What about this is familiar to you,</p> <p>10 what about Plaintiff's Exhibit 4 is familiar to</p> <p>11 you?</p> <p>12 A At this date I didn't know, so</p> <p>13 nothing about the body of this letter is for me.</p> <p>14 I didn't know at this date.</p> <p>15 Q I understand that you didn't know</p> <p>16 that Marshal Airday wasn't towing until February</p> <p>17 7, 2012?</p> <p>18 A Around there.</p> <p>19 Q This letter is dated January 19,</p> <p>20 2012, so it is approximately two or three weeks</p> <p>21 prior to that, so I understand that you didn't</p> <p>22 know about any issues with Marshal Airday until</p> <p>23 February 7, 2012; is that correct?</p> <p>24 A Basically, yes.</p> <p>25 Q At some point did you become</p>	<p>1 L. Jordan</p> <p>2 familiar with the issues that are set forth in</p> <p>3 this letter?</p> <p>4 A Yes. The issues, yes.</p> <p>5 Q Did Keith Schwam at any time in</p> <p>6 January or February inform the Department of</p> <p>7 Finance that he had told Marshal Airday to cease</p> <p>8 towing?</p> <p>9 A Not to my recollection, but he</p> <p>10 supercedes the Department of Finance. The</p> <p>11 department investigation supercedes us as far as</p> <p>12 suspending the marshal and what they can and</p> <p>13 cannot do.</p> <p>14 Q Your understanding is that Keith</p> <p>15 Schwam had the authority to go ahead and suspend</p> <p>16 Marshal Airday without seeking the Department of</p> <p>17 Finance's approval or permission; is that</p> <p>18 correct?</p> <p>19 A I believe so.</p> <p>20 Q When did you learn for the first</p> <p>21 time that Keith Schwam had directed George Airday</p> <p>22 to cease towing for the Department of Finance?</p> <p>23 A I think it still has to be</p> <p>24 somewhere in February.</p> <p>25 Q How did you learn that Keith Schwam</p>
Page 44	Page 45
<p>1 L. Jordan</p> <p>2 had directed George Airday to cease towing?</p> <p>3 A I can't say with certainty. I</p> <p>4 don't know if it was Marshal Airday's attorney or</p> <p>5 Marshal Airday that when questioned about the</p> <p>6 inventory, they found out that he was not towing</p> <p>7 at that time.</p> <p>8 I can't remember if it came from</p> <p>9 him or whatever. I was told that his attorney</p> <p>10 talked with Keith Schwam or DIO and Keith Schwam</p> <p>11 authorized him to continue towing. I can't tell</p> <p>12 you when or where.</p> <p>13 Q After February 7, 2012 what steps</p> <p>14 did you take with respect to Marshal Airday?</p> <p>15 A Once I found out then I had to also</p> <p>16 alert the sheriff because that's my superior, as</p> <p>17 to what was going on, what I was finding out,</p> <p>18 sending him whatever I had there, what happened,</p> <p>19 why we were not notified, and basically he said</p> <p>20 to send him a recommendation.</p> <p>21 MR. SMITH: Please mark this as</p> <p>22 Plaintiff's Exhibit 22.</p> <p>23 [Whereupon, the document was</p> <p>24 hereby marked as Plaintiff's Exhibit 22 for</p> <p>25 identification, as of this date, by the</p>	<p>1 L. Jordan</p> <p>2 reporter.]</p> <p>3 Q Plaintiff's Exhibit 22 is Bates</p> <p>4 945 through 946, which is just the first two</p> <p>5 pages of Plaintiff's Exhibit 21. This is just</p> <p>6 the two-page E-mail communication that was part</p> <p>7 of Plaintiff's Exhibit 21.</p> <p>8 Turning to Page 946, the bottom is</p> <p>9 an E-mail from you that you sent to Domenech and</p> <p>10 Sammarco?</p> <p>11 A Yes.</p> <p>12 Q Is Domenech the sheriff?</p> <p>13 A Yes.</p> <p>14 Q Why were you sending him this</p> <p>15 E-mail?</p> <p>16 A Because that's what I was directed</p> <p>17 to do by the sheriff.</p> <p>18 Q Who is Sammarco?</p> <p>19 A That's my immediate supervisor that</p> <p>20 I report to.</p> <p>21 Q What is his title?</p> <p>22 A He is chief of staff.</p> <p>23 Q Is this an E-mail that you sent to</p> <p>24 the sheriff and to your boss?</p> <p>25 A Yes.</p>

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Page 46	Page 47
<p>1 L. Jordan</p> <p>2 Q It says in the first sentence,</p> <p>3 "Received a call from Marshal Airday asking to be</p> <p>4 reinstated into the scofflaws program while this</p> <p>5 process is being adjudicated." Do you see that?</p> <p>6 A Yes.</p> <p>7 Q Is that accurate that you received</p> <p>8 a call from Marshal Airday asking to be</p> <p>9 reinstated?</p> <p>10 A Yes.</p> <p>11 Q When was his status removed?</p> <p>12 A The status was removed once the DIO</p> <p>13 had suspended him. As far as the program itself,</p> <p>14 the towing program, once we found out that he had</p> <p>15 these arrests and there was domestic violence</p> <p>16 involved.</p> <p>17 Q When was Marshal Airday removed</p> <p>18 initially from the scofflaws program?</p> <p>19 A When Keith Schwam notified him,</p> <p>20 however it happened, that he was suspended as a</p> <p>21 marshal.</p> <p>22 Q That happened sometime in the month</p> <p>23 previous?</p> <p>24 A Before my notification, yes.</p> <p>25 Q Am I correct that as of the time</p>	<p>1 L. Jordan</p> <p>2 you sent this E-mail to Domenech and Sammarco you</p> <p>3 knew that the DIO had suspended Marshal Airday?</p> <p>4 A I am not sure if I was told by him</p> <p>5 or DIO at that time. I know that I received -- I</p> <p>6 had to have known about it by February 9, 2012,</p> <p>7 when he is responding to a question of mine</p> <p>8 (indicating).</p> <p>9 Q Who at the Department of Finance</p> <p>10 made the decision to remove Marshal Airday from</p> <p>11 the scofflaws or the towing program?</p> <p>12 A Sheriff Domenech.</p> <p>13 Q Based on what authority did he make</p> <p>14 that decision?</p> <p>15 A The Department of Finance</p> <p>16 Commissioner, his or her designee, has the right</p> <p>17 to not issue executions to any marshal that they</p> <p>18 choose not to issue them to.</p> <p>19 Q Is Sheriff Domenech a Department of</p> <p>20 Finance employee?</p> <p>21 A Yes, he was. He is no longer the</p> <p>22 sheriff.</p> <p>23 Q At the time?</p> <p>24 A Yes, at the time.</p> <p>25 Q The Department of Finance sheriff</p>
Page 48	Page 49
<p>1 L. Jordan</p> <p>2 made the decision to pull Marshal Airday from the</p> <p>3 towing program; is that correct?</p> <p>4 A Yes, sir.</p> <p>5 Q When did he make that decision?</p> <p>6 A I would have to say he made that</p> <p>7 decision on February 9, 2012. I can't say 100</p> <p>8 percent if he told me verbally something on the</p> <p>9 8th. I can't recall that. I will go by what he</p> <p>10 says here.</p> <p>11 Q Your E-mail to Domenech and your</p> <p>12 boss suggest that Marshal Airday is calling</p> <p>13 asking to be reinstated to the scofflaws program.</p> <p>14 He must have been already removed,</p> <p>15 at least temporarily, from the scofflaws program;</p> <p>16 is that correct?</p> <p>17 A Yes, but the part that you are</p> <p>18 leaving out is DIO suspended him. As a marshal</p> <p>19 you can receive executions from us. If DIO</p> <p>20 suspends a marshal he or she can no longer</p> <p>21 receive executions, period.</p> <p>22 Q Are you telling me that DIO</p> <p>23 effectively made the decision to pull Marshal</p> <p>24 Airday from the scofflaws program because he was</p> <p>25 pulled completely from being a marshal?</p>	<p>1 L. Jordan</p> <p>2 A That's automatic.</p> <p>3 Q The answer to my question is yes,</p> <p>4 it is automatic, once DIO makes that decision to</p> <p>5 suspend Marshal Airday then automatically he is</p> <p>6 out of the scofflaws program; is that correct?</p> <p>7 A That is correct.</p> <p>8 MR. SMITH: Let's take a quick</p> <p>9 break.</p> <p>10 MR. NACCHIO: Sure.</p> <p>11 [Whereupon, after a short recess</p> <p>12 was taken, the following was had:]</p> <p>13 CONTINUED EXAMINATION</p> <p>14 BY MR. SMITH:</p> <p>15 Q You have in front of you still</p> <p>16 Plaintiff's Exhibit 22?</p> <p>17 A Yes.</p> <p>18 Q I was asking you questions about</p> <p>19 your E-mail to Domenech and Sammarco?</p> <p>20 A Yes.</p> <p>21 Q The second page, there is also a</p> <p>22 reference in the E-mail to, "I spoke with Keith</p> <p>23 and he felt that Marshal Airday should not be</p> <p>24 reinstated to the program as well." Do you see</p> <p>25 that?</p>

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Page 50

1 L. Jordan
2 **A Yes.**
3 Q That's a reference to Keith Schwam;
4 is that correct?
5 **A Yes, that is correct.**
6 Q When did you speak to Keith Schwam
7 as referred to in this E-mail?
8 **A Probably that day, just guessing.**
9 MR. SMITH: Guessing is not what I
10 am looking for. If you have a faint
11 recollection of the timeframe I would like
12 that, but if it is just sheer speculation
13 on your part then I don't think that's what
14 you or your lawyer want you to do.
15 I would just remind you that since
16 you are under oath your obligation is to
17 try the best you can to tell me what you
18 remember. It could be vague or very
19 concrete, but to just guess is not
20 consistent with what you are expected to do
21 here today.
22 **THE WITNESS: Sure.**
23 MR. NACCHIO: Note my objection to
24 counsel testifying or offering his opinion,
25 next question.

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1 L. Jordan
2 **arrested, I was aware that there was a firearm**
3 **involved. I may have been aware of the domestic.**
4 Q Are you saying in this E-mail that
5 you believe that Marshal Airday should not be
6 reinstated because the cases are still pending?
7 **A Yes.**
8 Q As far as the status of the case,
9 he has not been cleared; is that correct?
10 **A Yes.**
11 Q Because he has not been cleared of
12 the charges you believe it was appropriate to
13 maintain his suspension from the scofflaws
14 program; is that correct?
15 **A I was in agreement.**
16 Q You agreed that so long as these
17 charges were pending against him that he should
18 remain suspended from the scofflaws program; is
19 that correct?
20 **A That is correct, in agreement.**
21 Q Were there any other reasons other
22 than the fact that there were these cases, these
23 criminal charges against Marshal Airday which you
24 believed which justified, for him being suspended
25 from the scofflaws program?

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1 L. Jordan
2 Q Do you remember what Keith Schwam
3 told you about why he thought that Marshal Airday
4 should not be reinstated?
5 **A No, I can't remember.**
6 Q The next sentence in that exchange
7 or that E-mail that you sent is, "My feeling is
8 that the case(S) are still going on and nothing
9 has happened that I know of that cleared him of
10 the charges." Do you see that?
11 **A Yes.**
12 Q When you say the cases are still
13 going on are you referring to the criminal
14 charges against Marshal Airday?
15 **A Yes.**
16 Q When you wrote this E-mail you
17 understand there were charges of domestic
18 violence against Marshal Airday?
19 **A I knew there were arrests. Did I**
20 **know that there was domestic violence?**
21 MR. SMITH: I'll rephrase it.
22 Q What understanding did you have
23 about these cases at the time that you sent this
24 E-mail?
25 **A Again, I believe that he was**

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1 L. Jordan
2 **A No, no other cases, but that wasn't**
3 **the only reason why.**
4 Q Other than these cases what other
5 reasons were there for why you believed that it
6 was appropriate to maintain Marshal Airday's
7 suspended status, if any?
8 **A Based on the fact that we were**
9 **never notified. We were not notified of any**
10 **arrest or that any of these things took place.**
11 **We were not even notified why he was not towing**
12 **by him.**
13 Q Isn't the reason why he was not
14 towing because Keith Schwam told him to stop
15 towing?
16 **A I was finding that out later. He**
17 **is a part of our program as far as the towing.**
18 **He never notified us of his suspension.**
19 Q You believe that his failure to
20 notify you of Keith Schwam's decision to suspend
21 him was a reason for why Marshal Airday should
22 not be resumed as a member of the scofflaws
23 program?
24 **A That was in addition to Keith**
25 **Schwam's recommendation, yes, of not identifying**

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Pages 54..57

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1 L. Jordan
2 us that he would not be towing and that he had an
3 arrest.
4 We deemed the arrest very serious
5 when we found out about the domestic dispute and
6 there was a firearm involved and we have to deal
7 with the public.
8 Q Were the charges, the criminal
9 charges against Marshal Airday, were those the
10 principal reasons for why you thought the
11 suspension should be maintained or did you
12 independent to that also believe that Marshal
13 Airday was properly suspended because he didn't
14 notify you that Keith Schwam had suspended him as
15 marshal?
16 A Two separate things. Keith
17 Schwam's suspension is based on him being a
18 marshal, period. If we had known that he was
19 suspended he would have automatically been
20 suspended from the program.
21 Q Was the fact that Marshal Airday
22 didn't tell you on January 19, 2012 that Keith
23 Schwam had told him that he should no longer act
24 as a marshal, was the fact that he failed to give
25 you that notification the kind of failure that

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1 L. Jordan
2 criminal charges?
3 A I didn't track his case or anything
4 like that.
5 Q Did you ever become aware that he
6 was vindicated?
7 A I found out later on.
8 Q When did you find out?
9 A I don't know when I found out.
10 Q After he was vindicated and all of
11 the criminal charges were dropped did you think
12 it was still appropriate to keep him off of the
13 scofflaws program?
14 A Yes, I would have thought so.
15 Q Why?
16 A Because we were never notified. We
17 should have been notified, according to the stuff
18 I read here, that the first arrest took place in
19 December. I think the second was in January.
20 We were not notified of the -- we
21 got no notification. That would have been
22 enough, you understand, to also recommend that he
23 be terminated from the program.
24 Q Have any marshals ever been part of
25 the scofflaws program and been suspended from the

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1 L. Jordan
2 would justify you concluding in your opinion that
3 Marshal Airday should not be a marshal in a
4 scofflaws program?
5 A One of the reasons.
6 Q If the charges were resolved in
7 favor of Marshal Airday you still believe that it
8 would be appropriate to keep Marshal Airday off
9 of the scofflaws program?
10 MR. NACCHIO: Objection.
11 A That it would be appropriate to
12 keep him off the program?
13 Q Yes.
14 A Yes.
15 Q Permanently?
16 A Yes, during that time you can ask
17 for reinstatement, but yes. At that time, yes.
18 Q At what time?
19 A That the recommendation was to
20 terminate him from the program.
21 Q Are you aware that there were
22 criminal cases against Marshal Airday?
23 A Yes.
24 Q Were you aware that at some point
25 later he was completely vindicated of those

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1 L. Jordan
2 scofflaws program for failure to provide
3 notification of an arrest?
4 A I don't know, but not to my
5 knowledge.
6 Q Have any marshals that were part of
7 the scofflaws program during the 28 years that
8 you were involved ever been arrested?
9 A I don't know. Not to my
10 recollection, no.
11 Q Were any of the marshals that you
12 identified as part of the scofflaws program ever
13 suspended by the Department of Finance from the
14 scofflaws program for any reason?
15 A There have been marshals that were
16 suspended for something that may have been
17 inappropriate that was done like in the street or
18 something to that effect, yes.
19 Q Who was suspended?
20 MR. NACCHIO: Let's mark it
21 confidential.
22 A I don't have that information.
23 Q You don't know?
24 A No, not offhand.
25 MR. NACCHIO: No longer

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Louis Jordan

Job 26496
Pages 62..65

Page 62	Page 63
<p>1 L. Jordan</p> <p>2 Standard Operating Procedures?</p> <p>3 A Based on working in the program,</p> <p>4 period, being a part of the program.</p> <p>5 Q Is the underlying document that</p> <p>6 supports your decision to withdraw somebody or</p> <p>7 suspend somebody or maintain a suspension because</p> <p>8 they didn't notify you, is that protocol set</p> <p>9 forth in the SOP or is it set forth someplace</p> <p>10 else or if it is not set in place anywhere I</p> <p>11 would like to know that?</p> <p>12 A It is part of the SOP, but also at</p> <p>13 the discretion of the Commissioner or his</p> <p>14 designee.</p> <p>15 Q Where does it say it is at the</p> <p>16 discretion of the Commissioner?</p> <p>17 A An SOP also speaks to inappropriate</p> <p>18 behavior or actions as well.</p> <p>19 Q Other than the SOP is there any</p> <p>20 piece of paper anywhere in the world that you are</p> <p>21 aware of that says if a marshal is arrested he</p> <p>22 has to notify the Department of Finance?</p> <p>23 A No, I am not aware of anything</p> <p>24 else, no.</p> <p>25 Q The only writing that you are aware</p>	<p>1 L. Jordan</p> <p>2 of is this Standard Operating Procedure?</p> <p>3 A Yes.</p> <p>4 Q Looking at Plaintiff's Exhibit 21,</p> <p>5 looking at 947, am I correct that 947, 948 and</p> <p>6 949 are three pages from the SOP that was</p> <p>7 relevant to George Airday at the time?</p> <p>8 A Yes.</p> <p>9 MR. NACCHIO: Off the record.</p> <p>10 [Whereupon, a discussion was held</p> <p>11 off the record.]</p> <p>12 MR. SMITH: Please mark this as</p> <p>13 Plaintiff's Exhibit 23.</p> <p>14 [Whereupon, the document was</p> <p>15 hereby marked as Plaintiff's Exhibit 23 for</p> <p>16 identification, as of this date, by the</p> <p>17 reporter.]</p> <p>18 Q You have in front of you</p> <p>19 Plaintiff's Exhibit 23?</p> <p>20 A Yes.</p> <p>21 Q Are these excerpts from the</p> <p>22 Standard Operating Procedure?</p> <p>23 A Yes, at that time.</p> <p>24 Q This is one of the documents that</p> <p>25 was in the file that you maintain at your office</p>
Page 64	Page 65
<p>1 L. Jordan</p> <p>2 on Marshal Airday?</p> <p>3 A Yes.</p> <p>4 Q Is the entire SOP in the file or</p> <p>5 just these pages?</p> <p>6 A This is not kept in the file of</p> <p>7 Marshal Airday. This is a file, a separate file</p> <p>8 of its own. There is a complete SOP. It tells</p> <p>9 you how the towing program works on the street.</p> <p>10 This is part of it.</p> <p>11 Q You refer to this SOP in the E-mail</p> <p>12 exchange that you had with Keith Schwam and the</p> <p>13 sheriff, right?</p> <p>14 A Yes.</p> <p>15 Q Where in the SOP does it say that</p> <p>16 the marshal has the obligation to provide</p> <p>17 notification?</p> <p>18 A It doesn't say if he or she is</p> <p>19 arrested.</p> <p>20 Q It doesn't talk about that</p> <p>21 obligation in the SOP?</p> <p>22 A Not about the arrest, no.</p> <p>23 Q What does it talk about?</p> <p>24 A We refer to letter H.</p> <p>25 Q Do you believe that Marshal Airday</p>	<p>1 L. Jordan</p> <p>2 violated letter H?</p> <p>3 A Yes.</p> <p>4 Q How?</p> <p>5 A I think that through his improper</p> <p>6 behavior.</p> <p>7 Q Improper behavior is a violation</p> <p>8 of H?</p> <p>9 A That we deem serious, yes.</p> <p>10 Q Any improper behavior that the</p> <p>11 Department of Finance deems serious is a</p> <p>12 sufficient basis to suspend a marshal from the</p> <p>13 scofflaws program?</p> <p>14 A Not only to suspend them, they can</p> <p>15 be deemed even to stop issuing executions.</p> <p>16 Q From your perspective you can do it</p> <p>17 for any reason at all?</p> <p>18 MR. NACCHIO: Objection.</p> <p>19 A Yes. The Commissioner can or his</p> <p>20 designee, yes.</p> <p>21 Q The last sentence of this paragraph</p> <p>22 says, "Upon due and timely disclosure of</p> <p>23 information the Department of Finance will review</p> <p>24 pertinent facts and circumstances to determine</p> <p>25 whether the Department believes there is a</p>

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Page 102		Page 103	
1	L. Jordan	1	
2	CONTINUED EXAMINATION	2	thorough search.
3	BY MR. SMITH:	3	I am not trying to enter into a
4	Q Have you understood each of my	4	verbal war, but if something comes up I
5	questions today?	5	might have to ask you for you to come back
6	A Yes.	6	because I am not sure that I have gotten
7	Q Do you want to change any of your	7	all of the pieces of paper that I wanted to
8	answers?	8	get. Thank you very much for coming down.
9	A No.	9	MR. NACCHIO: I note your position
10	Q Do you want to clarify any of your	10	and my client will review and sign.
11	answers?	11	MR. SMITH: Yes.
12	A No.	12	[Whereupon, the examination of the
13	Q Is there anything that you want to	13	witness was concluded at 2:30 p.m.]
14	add to your testimony today?	14	
15	A No, sir.	15	
16	Q Is there anything else that you	16	
17	want to say for this deposition?	17	
18	A No, sir.	18	Subscribed and sworn to
19	MR. SMITH: Okay. Thank you Mr.	19	before me this ____ day
20	Jordan. I have no further questions at	20	of _____, 2017.
21	this time.	21	
22	I am going to reserve the right	22	Notary Public
23	potentially to call him back because of the	23	
24	open question that we discussed about	24	
25	E-mails and maybe there hasn't been a	25	

Page 104		Page 105	
1		1	
2		2	CERTIFICATION
3	WITNESS EXAMINATION BY PAGE	3	STATE OF NEW YORK)
4	L. Jordan Mr. Smith 5	4	: SS.:)
5		5	COUNTY OF NASSAU)
6		6	I, KAREN ZAMMIT, a Notary Public for and
7	PLAINTIFF'S EXHIBITS DESCRIPTION PAGE	7	within the State of New York, do hereby certify:
8		8	That the witness(es) whose testimony as
9	21 Bates 945-952 6	9	herein set forth, was duly sworn by me; and that
10	22 Bates 945 and 946 44	10	the within transcript is a true record of the
11	23 excerpts from SOP 63	11	testimony given by said witness(es).
12	24 Bates 950 68	12	I further certify that I am not related to
13	25 Bates 951 71	13	any of the parties to this action by blood or
14	26 Bates 952 72	14	marriage, and that I am in no way interested in
15	27 Daily News article 85	15	the outcome of this matter.
16	[Exhibits retained by attorney.]	16	IN WITNESS WHEREOF, I have herunto set my
17		17	hand this 10th day of August, 2017.
18	REQUESTS	18	
19	Page Line	19	<i>Karen Zammit</i>
20	12 7	20	KAREN ZAMMIT
21	58 18	21	
22		22	
23		23	
24		24	
25		25	

EXHIBIT D

LE. - M. Nasario

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
GEORGE AIRDAY,

Plaintiff,

-against-

THE CITY OF NEW YORK, KEITH SCHWAM and
DAVID M. FRANKEL,

Defendants

CERTIFIED COPY

100 Church Street
New York, New York

August 17, 2017
11:20 a.m.

DEPOSITION of CAROLINE TANG-ALEJANDRO, a
witness on behalf of THE CITY OF NEW YORK, one of
the Defendants herein, held at the above time and
place, taken before Karen Zammit, a Shorthand
Reporter and Notary Public of the State of New
York, pursuant to Rule 26 et seq. of the Federal
Rules of Civil Procedure and stipulations between
Counsel.

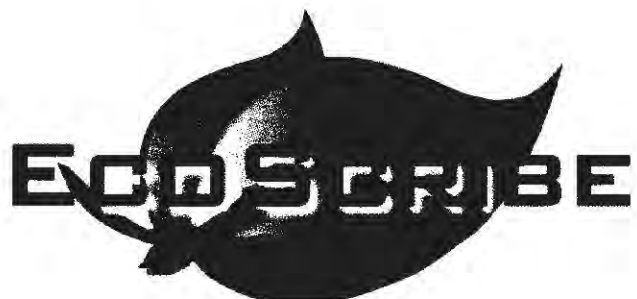
Job #26510

* * *

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GEORGE AIRDAY -against- CITY OF NEW YORK
Caroline Tang-Alejandro

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Page 2

APPEARANCES:

LAW OFFICES OF NATHANIEL B. SMITH, ESQ.
Attorneys for Plaintiff
80 Broad Street
New York, New York 10004

BY: NATHANIEL B. SMITH, ESQ.

Nathsmith@gmail.com
212-227-7062

NEW YORK CITY LAW DEPARTMENT
Attorney for Defendants
100 Church Street
New York, New York 10007

BY: MICHAEL NACCHIO, ESQ.

Mnacchio@law.nyc.gov
212-356-0839

NYC DEPARTMENT OF INVESTIGATION
80 Maiden Lane
New York, New York 10038

BY: MICHAEL SILLER, ESQ.

Msiller@doi.nyc.gov

ALSO PRESENT:

George Airday

* * *

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Caroline Tang-Alejandro

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Page 3

STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED, by and among counsel for the respective parties hereto, that the filing, sealing and certification of the within deposition shall be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to form of the question, shall be reserved to the time of the trial;

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed before any Notary Public with the same force and effect as if signed and sworn to before the Court.

IT IS FURTHER STIPULATED AND AGREED that counsel shall furnish counsel for the witness with a copy of the within deposition without charge.

* * *

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Caroline Tang-Alejandro

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1 C. Tang-Alejandro

2 Q For this first page, this 2005
3 chart, it lists 38 City marshals, right?

4 A Yes.

5 Q Can you identify which of the 38
6 marshals here are marshals who were part of the
7 scofflaw program?

8 A I don't know if I can identify all
9 of them.

10 Q Can you justify the ones that you
11 know were members of the scofflaw program?

12 A Okay. Mr. Airday, Burco,
13 Giachetta, Guida, Hammer, Locascio, Jeffrey Rose,
14 Schain, Siracusa, Sollmine, Swift. That's it.

15 Q What was the scofflaw program?

16 A The scofflaw program is part of the
17 Department of Finance and the Department of
18 Finance Parking Violations Bureau.

19 If a respondent has gotten more
20 than a certain amount of money in tickets they
21 become scofflaw and the Department of Finance
22 contracts or has a program and contracts the
23 marshals to actually go and tow vehicles that
24 were scofflaw at that time.

25 Q Did there come a time when the

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Caroline Tang-Alejandro

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cooperating with an investigation, so I didn't have anything to relate it to.

Q You didn't think it seemed like a harsh consequence?

MR. NACCHIO: Objection. Asked and answered.

A I just took it as -- no, I didn't judge it as harsh or not harsh enough. It is just something that occurred because he is expected, and it is in the handbook, that he cooperate with any DOI investigation.

It was not up to me to decide and I was not privy to any conversations. I don't know the specific determining factors. It is just this abstract -- he didn't cooperate with an investigation and this was the final outcome.

Q You remember going to the interview that may have been tape recorded, right?

A I remember going to the interview.

Q Do you remember it lasted a few hours and Mr. Schwam asked Mr. Airday questions, right?

A Yes.

Q Mr. Airday had an attorney with him

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1

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2

at the time, Mr. Sternbach; is that correct?

3

A I don't remember the person's name.

4

Q There was somebody else there?

5

A Yes.

6

Q Who was Mr. Airday's lawyer?

7

A Yes.

8

Q You were there, right?

9

A Yes.

10

Q Mr. Schwam was there?

11

A Yes.

12

Q Was anyone else there?

13

A I don't think so. I don't

14

remember.

15

Q Do you recall any discussions with

16

Mr. Schwam either before or after that

17

examination?

18

MR. NACCHIO: Objection to form.

19

You can answer it.

20

A No, I don't.

21

MR. SMITH: I'll rephrase it.

22

Q Do you remember any discussions

23

that you had with Mr. Schwam about the interview

24

before it took place?

25

A No, I don't remember.

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Q Do you recall any discussions that you had with Mr. Schwam about the interview after the interview took place?

A I don't recall.

Q Did Mr. Schwam tell you after the interview that Mr. Airday was going to be reinstated as a marshal?

A I don't recall that.

Q Did you have an understanding one way or the other at the time of the interview whether or not Mr. Airday was going to be reinstated as a marshal?

A Not that I can remember.

Q Looking at the last three pages of Plaintiff's Exhibit 11, which is the stipulation, see if that refreshes your recollection.

A I don't remember much about the interview. I do remember the suspension.

Q Looking at the second page of the stipulation, paragraph number one says, "Marshal Airday agrees to fully cooperate with the DOI investigation of his conduct including giving full and complete testimony under oath." Do you see that?

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1 DOI

2 A Yes.

3 Q Do you know whether or not the
4 interview that you attended where Mr. Schwam
5 questioned Mr. Airday was the event that was
6 designed to comply with this provision that I
7 just read to you?

8 A No, I don't.

9 Q As a result of or following the
10 interview that you participated in with Mr.
11 Schwam did you have any understanding that DOI
12 was going to then take steps to reinstate Marshal
13 Airday?

14 A I do not recall. I don't remember
15 the dates relative to the interview, no, I don't.

16 Q Do you have any recollection about
17 what it was that Marshal Airday didn't cooperate
18 with DOI in doing?

19 A I recall -- this is not discussion,
20 it is just information floating in the head, that
21 I believe DOI requested documents and those
22 documents were not submitted by Mr. Airday.

23 I believe in questioning Mr. Airday
24 with regard to a gun, I don't know the make or
25 the model of the gun, at one point Mr. Airday

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1 DOI

2 said that it belonged to his deceased father and
3 that he just put it in the safe and forgot that
4 he had it.

5 Again, time, I don't know the
6 timeframe, but I believe after that he said he
7 had purchased the gun from someone. It just
8 didn't seem -- I don't know the specifics, but it
9 didn't seem that he was cooperating with Mr.
10 Schwam's investigation.

11 Q Do you know what documents it was
12 that Mr. Airday was supposed to provide that he
13 didn't provide that formed the basis for this
14 charge against Mr. Airday for not cooperating
15 with the DOI?

16 A No, I don't know.

17 Q You have read the stipulation that
18 is part of Plaintiff's Exhibit 11, correct?

19 A Yes.

20 Q It says that there were two sets of
21 criminal charges that were made against Marshal
22 Airday, right?

23 A Yes.

24 Q One was for assault, right?

25 A Yes.

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1 DOI

2 marshal at the end of his or her term to expect
3 to be able to continue as a marshal?

4 MR. NACCHIO: Objection. You may
5 answer it.

6 THE WITNESS: Please repeat that.

7 [Whereupon, the requested portion
8 of the record was hereby read by the
9 reporter.]

10 MR. NACCHIO: Objection.

11 A That's a difficult question to
12 answer. They should know that their badge term
13 while they are on holdover status is considered
14 and deemed vacant. If not, that's why they
15 reapply, because it is not -- nothing is owed or
16 given to them. They reapply. They are re-vetted
17 and may or not be re-interviewed and they may or
18 may not be reappointed.

19 Q You don't think it is reasonable
20 for a marshal to expect to be able to continue
21 acting as a marshal after their five-year term
22 expires?

23 MR. NACCHIO: Objection. You can
24 answer it.

25 A My opinion is that I would not take

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Caroline Tang-Alejandro

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it for granted.

Q It is true that the marshals have to open up an office in order to be a City marshal; is that correct?

A They can choose to open up an office. Some marshals choose to share an office with an existing marshal.

Q It is certainly required that they maintain office hours, right?

A Yes.

Q That's because if a member of the public needs to reach them because they are the ones involved in the execution on the judgment there are rules that the DOI establishes that say you must maintain regular business hours so that members of the public can reach you, right?

A Yes.

MR. NACCHIO: Objection.

Q It is also true that marshals, either on their own or in association with other marshals, have staff to deal with paperwork and to deal with other inquiries from the public; is that correct?

A Yes.

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1
2 MR. NACCHIO: Okay.

3 [Whereupon, after a short recess
4 was taken, the following was had:]

5 MR. SMITH: Thank you very much. I
6 have nothing further at this time.

7 If I need to ask you to come back
8 it is going to be because there is some
9 squabbling over documents that I have not
10 yet reviewed, but subject to that I don't
11 think I will need to bring you back. Thank
12 you very much.

13 MR. NACCHIO: Okay. Miss
14 Tang-Alejandro will review and sign.

15 MR. SMITH: Okay. Thank you.

16 [Whereupon, the examination of the
17 witness was concluded at 2:45 p.m.]

18
19 _____
20 CAROLINE TANG-ALEJANDRO

21
22 Subscribed and sworn to
23 before me this ____ day
24 of _____, 2017.

25 _____
Notary Public

EXHIBIT E

1
2
3 UNITED STATES DISTRICT COURT
4 SOUTHERN DISTRICT OF NEW YORK
5

6 -----
7 GEORGE AIRDAY,

8 Plaintiff,

9 vs.

Index No.
14-CV-8065

10 THE CITY OF NEW YORK, KEITH
11 SCHWAM and DAVID M. FRANKEL,

12 Defendants.
13 -----
14

15 DEPOSITION OF ANDREW SALKIN

16 New York, New York

17 Tuesday, November 21, 2017
18
19
20
21

22 Reported by:
23 Jeremy Frank, MPM
24 JOB NO. 27084
25

GEORGE AIRDAY vs THE CITY OF NEW YORK
Andrew Salkin

Job 27084
Page 2

November 21, 2017

11:41 a.m.

Deposition of ANDREW SALKIN, held at the
Law Offices of Nathaniel B. Smith, 80 Broad
Street, New York, New York, pursuant to
Subpoena, before Jeremy Frank, a Notary Public
of the State of New York.

A P P E A R A N C E S:

LAW OFFICES OF NATHANIEL B. SMITH

Attorneys for Plaintiff

80 Broad Street, 19th Floor

New York, NY 10004

BY: NATHANIEL B. SMITH, ESQ.

NathSmith@gmail.com

(212) 227-7062

NEW YORK CITY LAW DEPARTMENT

Attorneys for Defendants

100 Church Street

New York, NY 10007

BY: GARRETT S. KAMEN, ESQ.

GKamen@law.nyc.gov

(212) 356-2479

Salkin

A. Yes.

Q. What is PayLock?

A. PayLock is a company that when I worked for the City, the City partnered with to provide a turnkey booting payment scofflaw finding services.

Q. And so I take it when you searched, you did your search, your searched for any e-mails referring to Airday and you searched and you found nothing, right?

A. Yes.

Q. Then you did a search for any documents or e-mails reflecting objections or concerns about PayLock. And I understand you say that you found nothing about that also?

A. I followed your directions here and I didn't find anything.

Q. I see.

So maybe the request is ambiguous. So what I was hoping you would do is search for any e-mails or documents that related to Airday as one category.

A. Right.

Q. And then as a separate category,

1 Salkin

2 that led to this contract creation, if that's
3 what you mean by negotiations.

4 Q. Let me ask you this way.

5 Who at the Department of Finance
6 was involved in negotiations over the PayLock
7 contract?

8 A. So again, I guess negotiations for
9 the contract are the terms that are in the
10 contract, is that what you mean?

11 Q. No, just sort of generally there
12 was, I'm trying to understand your role and
13 other people's roles in the development of a
14 proposal by PayLock to start a booting program
15 at the Department of Finance.

16 A. So your questions I hear you, it
17 is not exactly clear, I'm not trying to be a
18 pain. You're saying proposal that PayLock
19 created, this document was in response to a
20 procurement that the City did.

21 Q. What was that procurement?

22 A. It was a procurement for services
23 to create a self, I can't remember the exact
24 details but it was if I remember to the best
25 of my memory it was a contract asking for

1 Salkin

2 someone to provide a self-removing booting
3 system with supporting turnkey technology that
4 included the payment process and vehicle
5 finding systems.

6 Q. Who was the one that set that
7 procurement process in motion?

8 A. Me.

9 Q. Who else was involved in setting
10 the procurement process in motion?

11 A. Meaning?

12 Q. At the time at the Department of
13 Finance?

14 A. Like the ACCO, the Agency Chief
15 Contracting Officer?

16 Q. You tell me, I don't really know
17 what your process was.

18 A. Well, it is not what my process
19 was, it is the City's process for contracting.
20 So you create a document, you put it out for
21 response, you evaluate the responses, and then
22 you decide if anyone won an award. The
23 process for doing that is you create a bid
24 document and you publicize that through the
25 City's process, I don't do that, there is a

1 Salkin

2 whole City infrastructure to do that work.

3 Then we at the finance evaluate proposals that
4 get submitted.

5 Q. Was a request for proposal
6 generated?

7 A. I believe we had an open
8 procurement that we put on the street, yes,
9 but that's my recollection.

10 Q. Were there any other bidders other
11 than PayLock?

12 A. To me memory we did get other
13 bidders.

14 Q. Who?

15 A. I don't remember who.

16 RQ.

17 MR. SMITH: Garrett, I think I made
18 a request for some of these underlying
19 PayLock documents. My understanding is
20 it was a no bid contract that went
21 through a separate process, not an RFP
22 process.

23 So I'm going to make a request that
24 Department of Finance search for any
25 requests for proposals bids that were

1 Salkin

2 debt was assigned to the marshals, the person
3 who was directly responsible for overseeing
4 the marshals' collection of that debt was
5 Louis Jordan?

6 A. It sounds okay, but I don't know
7 exactly what Louis Jordan did day to day, but
8 I believe he oversaw the marshal program in
9 some capacity related to towing or scofflaw.

10 Q. The other choices that the
11 Department of Finance had for the assignment
12 of debt relating to parking judgments was the
13 sheriffs?

14 A. No, we could assign the debt to
15 collection agencies. We ran some additional
16 programs related to large ticket getters that
17 promoted the commerce of the City, and so
18 there was special programs related to delivery
19 vehicles, and we could also decide to do
20 nothing. I think we could also assign debt at
21 a certain stage, you could have your
22 registration withheld if you were a driver,
23 and I'm sure there was probably a couple of
24 others.

25 MR. SMITH: I'll show you what's

GEORGE AIRDAY vs THE CITY OF NEW YORK
Andrew Salkin

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Salkin

C E R T I F I C A T E

STATE OF _____:

COUNTY/CITY OF _____:

Before me, this day, personally appeared
ANDREW SALKIN, who, being duly sworn, states
that the foregoing transcript of his
Deposition, taken in the matter, on the date,
and at the time and place set out on the title
page hereof, constitutes a true and accurate
transcript of said deposition.

ANDREW SALKIN

SUBSCRIBED and SWORN to before me this
_____ day of _____, 2017, in the
jurisdiction aforesaid.

My Commission Expires

Notary Public

GEORGE AIRDAY vs THE CITY OF NEW YORK
Andrew Salkin

Job 27084
Page 81

Salkin

C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

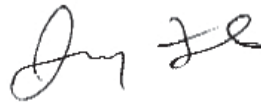
COUNTY OF NEW YORK)

I, Jeremy Frank, a Notary Public within
and for the State of New York, do hereby
certify:

That ANDREW SALKIN, the witness whose
deposition is hereinbefore set forth, was duly
sworn by me and that such deposition is a true
record of the testimony given by the witness.

I further certify that I am not related
to any of the parties to this action by blood
or marriage, and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereby
set my hand on the 23rd day of November, 2017.



JEREMY FRANK, MPM